



THE CONCEPT OF JUSTICE IN ISLAM

re:
QISAS
& DIYAT
LAW



NATIONAL
COMMISSION
ON THE STATUS
OF WOMEN

NCSW



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DIYAT LAW



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PREFACE

Violence against women continues as a deeply embedded customary norm in the name of culture. If moral values are the determinants of a culture, then this certainly raises serious questions about the conscience of the society. Whether it is honour killing or forced marriage or any other related issue, it demands serious attention.

National Commission on the Status of Women is a statutory body having a mandate to raise the consciousness of the public and private sector by reviewing the laws, examining the rules and regulations that fail to deliver their intent to the half of the population the women of Pakistan. Unfortunately, most of the time it is the vague interpretation and misunderstanding of the tenets of Islam, that complicate the issues further.

Recognizing the seriousness of the issue, National Commission on the Status of Women carried out a policy research on 'The Concept of Justice in Islam: Qisas And Diyat Law' This research was a component of the UNDP Project, Institutional Strengthening of National Commission on the Status of Women, initiated in 2004.

When I joined NCSW in January 2006, this report was still a first draft. This research was then presented to legalists, experts, scholars and activists for their opinion. After a series of rigorous dialogues and discussions, it was ready for Policy Recommendations. These recommendations accordingly were then presented to the President of Pakistan.

This extensive and exhaustive research owes to all those religious, political leaders, jurists, legalists, parliamentarians, civil servants and the civil society activists who immensely contributed to its credibility. I am personally indebted to them all.

I will gratefully acknowledge the UNDP support for the provision of a Research Associate, Syeda Viqar-un-nisa Hashmi who carried out this research.

The former Chairperson Justice [®] Majida Razvi, has penned a foreword for the draft report. The research was completed and finalized after her tenure was over, so as a matter of protocol, her foreword is included in this report.

I am sure this research will help in future legislation and policy reforms.

Dr. Arfa Syeda Zehra
Chairperson

Foreword

The National Commission on the Status of Women (NCSW) is a statutory body mandated to review the laws, rules and regulations adversely affecting the status and rights of women in Pakistan and to recommend to the Government of Pakistan appropriate reforms for it.

Taking cognizance of the steady increase in violence against women in the form of ‘honour’ killing, giving of women in marriage as compensation (*badl-e-sulh*), etc., the Commission initiated a subject policy research in October 2003. The research was carried on for nearly eight months. In the light of the Concepts of Justice in Islam and the Constitutional guarantees, it instituted a thorough review of the relevant provisions of prevalent laws including the PPC, Cr.P.C., *Qanoon-e-Shahadat*, etc., judgements given by Courts at all levels, statistics/data obtained from police departments and Courts.

The Commission’s policy recommendations in this report are the outcome of this in-depth research and the opinions of the experts from different segments of life including the Religious Scholars, Religio-Political Leaders, Heads of Religious Institutions, Judges, Lawyers Parliamentarians, concerned Public Sector Officials and the Civil Society.

I would like to put on record my deep appreciation for UNDP in strengthening the Commissions’s efforts to achieve our goals. Under its Gender Support Programme (GSP) UNDP detailed to us the services of Syeda Viqar-un-nisa Hashmi as a Research Associate for this project. She has conducted this research under my supervision with great dedication.

It is hoped that the Commission’s policy recommendations will assist the Government of Pakistan in bringing about the necessary Policy reforms to ensure eliminating all forms of discrimination against women.

Justice[®] Majida Razvi

Chairperson

**National Commission on the Status of Women
(NCSW)**

Acronyms

AGHS	An organization working for Human Rights
AJK	Azad Jammu & Kashmir
Art.	Article
Cr. P.C.	Criminal Procedure Code 1898
HRCP	Human Rights Commission of Pakistan
NCSW	National Commission on the Status of Women
NLR	National Law Report
NWFP	North West Frontier Province
N.Y.	New York
P.Cr.L.J.	Pakistan Criminal Law Journal
PLD	Pakistan Law Digest
PSC	Pakistan Supreme Court
PSC (CrI.)	Pakistan Supreme Court – Criminal case
P.P.C.	Pakistan Penal Code 1860
SC	Supreme Court
SCMR	Supreme Court Monthly Review
Sec.	Section
Co.	Company
UNDP	United Nations Development Programme
U/s	Under section
Vol.	Volume

Executive Summary

The theme of this policy research revolves round the key principle of Islam which is ‘justice.’ The prime condition of justice is the equality of all human beings before law irrespective of any caste, creed, culture, sex, etc., as is clearly stipulated in *Surah Nisa*’s verse 1 and stressed upon by Prophet Muhammad (PBUH) in his last sermon. Therefore, it should be considered the basic human right, which is inalienable and inherent in Islamic faith.

The Constitution of Pakistan also pledges to this principle of justice, by guaranteeing equality before law and entitlement of every individual to equal protection of law. (Art.25). In addition, it provides a principle policy for the promotion of social and economic well being of the people (Art.38) and strictly prohibits the promulgation of any law which is inconsistent and in contravention of the fundamental rights of its people (Art.8)

Despite the above, in recent years, there has been an increase in violence against women including ‘honour’ killings and ‘*swara*’/’*vani*’ i.e., the giving of a woman in marriage as *badl-e-sulh* (compensation to victim’s family) with a high rate of acquittal or award of lighter punishment to the offenders of these crimes in Pakistan. This has prompted NCSW to hypothesize that the concept of ‘*Qisas* and *Diyat*,’ as incorporated in the PPC has either inadequately encompassed the principles of Islam on the subject or it has been drafted and implemented in a way which is facilitating these social evils.

Since, the concept of *Qisas* and *Diyat* is Islamic, hence an initial attempt was made to ascertain the coherence of each of the provision of *Qisas* and *Diyat* in the PPC with the Islamic injunctions as enshrined in Holy Qur’an and *Sunnah*.

Accordingly the following provisions of the PPC have been found to be either inconsistent with the injunctions of Islam or they are interpreted and enforced in a manner that is against the spirit of Islam:

- Section 302 pertaining to punishment of *Qisas* and *Ta’zir* for *Qatle-e-amd*,
- Section 304 providing for the proof of offences,

- Section 338F directing the judiciary to seek guidance from the Qur'an and *Sunnah* while interpreting and applying the provision of the law of *Qisas* and *Diyat* in PPC,
- Section 306 and 307 giving exemption to the offender from the punishment of *Qisas*,
- Section 299 (m) and 305 defining '*wali*,'
- Section 309, 310, outlining the right to compound the offence by the *wali*
- Sections 313 and 338E, 330 and 337Z providing mode for the disbursement of compensation i.e., *Diyat*, *Arsh* and *Daman*.

In addition to the above, the plea of 'Grave and Sudden Provocation,' (though repealed on the promulgation of *Qisas* and *Diyat* Ordinance 1990) and the right to self defence, as provided under Chapter IV, PPC (Anglo-Saxon law) are also considered to be as valid grounds for the grant of relief to the offenders of *Qatl-e-amd* particularly 'honour' killings, which is against the spirit of Islam.

Moreover, the subject law is silent on the application of the Islamic provisions of *Qisas* and *Diyat* on non-Muslims particularly at times of clash of such provisions with the personal law of the minority. As an example, the distribution of the amount of *Diyat* governed by the Muslim law of inheritance prompts them to agitate against the application of the said Islamic law on them. This law being part of the criminal law, as envisaged, is applicable to all the citizens as well as those living in the country at the relevant time. The difficulty arises in the application of these laws on non Muslims as it violates the constitutional guarantees given under Art.227(3) and section 2 of the Shariyat Act 1992. Due to this complexity the criminal law should not be based on any particular religion while encompassing all the humane side of the Islamic injunctions justice and equity.

Based on the above challenged provisions, ten (10) main issues have been formulated with an objective to explore their solution within the concept of justice in Islam as encompassed in the key words '*Ad-Din*' and '*Al-Islam*,' given in *Surah Al-Maida* verse 3 and the criminal justice system.

The study has revealed that the issues of violence against women including 'honour' killing and *Swara / vani* have no nexus with Islam. In fact, they are strictly prohibited in Islam. But

unfortunately the misconceptions about the Islamic Justice System, socio-cultural traditions and the mind-set of the judiciary, have facilitated lacunas in the prevalent provisions of subject law. Hence the offenders are either mostly acquitted or if they are at all punished, it is the minimum possible punishment, which does not cause any future deterrence to such deeds in the society.

Issue-based Outcome of Research:

Following is the summary of the research findings:

1. All offences covered by the provisions of *Qisas and Diyat* in P.P.C., are directed against the legal order of the state, society and an individual.
2. The crime of ‘honour’ killing is not only a crime against the victim personally, but against the entire humanity.
3. The right to demand *Qisas* or compound the offence comes only after the crime is proved. Further, the decision to waive the right of *Qisas*, taken by one of the legal heirs cannot operate against the rest of them.
4. Since women in our patriarchal social set-up cannot easily assert their rights, and often succumb to social pressures the state must move in to ensure justice to the victims and prosecute the offender under *tazir*, even if a female victim of violence has waived her right of *Qisas*.
5. Islamic injunctions do not provide for exemption from the punishment of *Qisas*. as envisaged in the provisions of law of *Qisas and Diyat* as incorporated in the P.P.C.
6. The Law of Inheritance does not apply to the distribution of the amount of compensation termed as *Diyat, Arsh* and *Daman*.

7. *Swara/vani* or any such practice of giving women in marriage as compensation (*badl-e-sulh*) is totally against the Islamic injunctions and calls for the award of exemplary punishment to the culprits. However, if any such marriage has already taken place, then the Court must ensure the existence of the consent and safety of the bride otherwise that marriage should be annulled with immediate effect. The child with in such wedlock must in any case be declared and considered legitimate.(In 2004 an amendment was inserted in the law known as Act 1 2005) providing punishments for violating the law.
8. The Provisions of *Qisas* and *Diyat* in PPC are applicable to the non-Muslims as being part of general public law, provided the provisions that are in conflict with the personal laws of non-Muslims are neutralized as provided in the injunctions of Islam.
9. The application of the conditions of '*Tazkiyah-tul-Shuhod*,' as provided under *Hudood Ordinances, 1979* has no nexus with the Islamic Injunctions. Further, in the absence of ocular evidence, circumstantial evidence must be considered even for the punishment of *Qisas*.
10. Offence of 'honour' killing can be curbed by involving inter alia multi-pronged strategy by sensitization of the judiciary, law enforcing agencies and public at large. Further foolproof legal framework, strict law enforcement and improved investigation methods must be adopted to minimize the crime.

Accordingly amendments in the prevailing legal framework are strongly suggested to deliver justice to all, particularly the women of Pakistan. The Government of Pakistan, under Fundamental Rights Art.25 and Principles of Policy Art.34 is under obligation to bring amendments to remove the anomalies in the law.

Chapter One

I. Introduction

The National Commission on the Status of Women (NCSW), constituted under the Ordinance No. XXIV of 2000, initiated this research as an exercise of its mandate to review all policies, laws, rules and regulations affecting the status and rights of women in Pakistan and to suggest repeal, amendments or new legislations essential to eliminate discrimination, safeguard and promote the interest of women, achieve gender equality in accordance with the Constitution and obligations under international covenants and commitments.

The Concept of law of *Qisas* and *Diyat* as incorporated in the Pakistan Penal Code (PPC), 1860 Chapter XVI under the title “Offences Affecting The Human Body” has not been discussed and debated adequately in any circle despite lacunae and errors in its drafting, leading to increased violence against women in the form of killing in the name of ‘*ghairat*,’ (*honor*) *vani* / *swara* i.e. giving of a woman in marriage as badl-e-sulh (compensation), etc. The situation is aggravated inter alia due to wide discretionary powers given to the judiciary at the District Court level to interpret law according to the Islamic injunctions as enshrined in the Holy Qur’an and *Sunnah without proper training*, coupled with the defective and corrupt police investigation system and non implementation by the law enforcement agencies on flimsy grounds.

Taking into cognizance of the above mentioned problems, the NCSW initiated the subject research with the objectives to identify the lacunae/defects and resulting anomalies in *Qisas & Diyat* law as incorporated in the PPC, adversely affecting women’s rights and status in Pakistan and to come up with the recommendations for the Government of Pakistan to bring about the necessary changes/amendments in the present legislation according to the correct interpretation of Islamic injunctions, ensuring removal of any discrimination against women.

The research proposal on the caption subject, was approved at the 19th meeting of the National Commission on the Status of Women (NCSW), held on 29th - 30th August 2003, at the Commission's Secretariat. The research study was conducted by Syeda Viqar-un-nisa Hashmi, Research Associate, NCSW under the supervision of Justice [®] Majida Razvi, Chairperson National Commission on the Status of Women (NCSW) in consultation with the religious scholars, judges (at all levels), lawyers, parliamentarians, concerned Public Sector Officials and Civil Society, all over Pakistan. International scholars have also been consulted on the subject.

II. Methodology

The methodology adopted in research was divided into the following four (4) Phases:

1. Phase – I

Review of laws: This part includes the preliminary review of all the relevant laws in Pakistan i.e., Constitution of Pakistan, 1973, Pakistan Penal Code 1860, Criminal Procedure Code 1898, and *Qanoon-e-Shahadat*. 1984.

a. **Data Collection:** The data of the registered cases of violence against women (1997 to 30th May 2003) was collected from all the police departments of Pakistan.

Similarly, efforts were made to collect data of the cases instituted (in courts of original jurisdiction), appeals filed (in the High Courts) and the judgments passed under the provisions of the PPC, relating to *Qisas* and *Diyat*, from 1990 to date, was collected from the High Courts of Pakistan.

Case laws on the subject from 1977 to date were also collected.

b. Framing of Issues

The issues had been framed after the analysis of the following:

- The frequency of the occurrence of crimes against women in Pakistan
- The outcome of the cases instituted and appeals filed in the courts under *Qisas* and *Diyat* law in Pakistan
- The provisions of the relevant laws
- The socio-economic aspects of the discriminatory social practices duly linked with the provisions of *Qisas* and *Diyat* in PPC.
- The religious aspects of the above mentioned discriminatory practices
- Judgments of the cases decided under the provisions of *Qisas* & *Diyat* in the PPC.

c. In-depth research study:

‘*Qisas*’ and ‘*Diyat*’ are Islamic concepts. In order to find the solution to the identified issues given in the following pages, which arose due to defects in the law i.e., the PPC sections 299 to 338, General Exceptions under chapter IV and other relevant laws, particular reference is made to the primary sources of Islamic law i.e. the Holy Qur’an & *Sunnah* and their explanation / interpretations by different scholars.

In this research study, the reliance has been made on the primary sources of law as the Constitution inter alia provides that: “All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Qur’an and *Sunnah*,”¹ though there are secondary

¹ Article 227, The Constitution of Pakistan, 1973

sources of Islamic law as well i.e. *Ijma'*; consensus and juristic deductions including *Qiyas*: (Analogy), *Istihsan* or (Juristic Equity, Public Good) *Istidlal*; (Reasoning) and *Ijtihad*; (Juristic Exposition).

The research further drew its strength from the judgment of the Supreme Court (Shariat Appellate Bench) in the case of Pakistan and others v. public at large and others, in which it was held that: “the controversy can be resolved by direct resort to the Qur’an and *Sunnah*.”

²

2. Phase – II

a. Consultation:

○ Semi-structured Interviews:

Exclusive interviews with the religious scholars, judges (at all levels) in Pakistan were conducted.

About 18 religious scholars from all over the world were contacted via e-mail, for their feedback / opinion.

○ Focused Group Discussions:

Fifteen (15) focused group discussions were held at federal and provincial levels with the following groups of people:

- (1) Religious scholars, religio political leaders and the heads of religious institutions;

² Shariat Appellate Bench in Pakistan and others v. Public at large and others PLD 1987 SC 304

(2) Parliamentarians, public sector officials and civil society;

(3) Retired judges of superior courts, lawyers and academicians. In the session held in Islamabad, the diplomats from Islamic countries were also invited.

3. Phase – III

This phase includes the transcription of video tapes of all the above mentioned focused group discussions and simultaneous report writing.

a. Scrutiny of the Research Report by a Committee of Experts:

The Chairperson NCSW constituted a committee of experts including religious scholars, lawyers, concerned public sector officials and civil society to examine the report thoroughly.

The draft report was sent to the following experts:

- Dr. Khalid Masood, Chairman, Council of Islamic Ideology;
- Mr. Javed Ahmed Ghamidi, Religious scholar/President of Al Mawrid Institute of Islamic Sciences;
- Dr. Muhammad Farooq Khan, Religious Scholar;
- Mr. Aslam Khaki, Advocate Supreme Court/Jurisconsultant Federal Shariat Court;
- Syed Afzal Haider, Religious Scholar/Advocate Supreme Court;
and
- Dr. Faqir Hussain, Secretary Pakistan Law Commission.

- b. **Approval of the Report by the members of the NCSW** after due consultation with them and the incorporation of their input.

4. Phase – IV

This is the final phase encompassing printing launching and dissemination of the report at national and provincial level, respectively.

III. Objectives

The research study is aimed to achieve the following:

- Identification of lacunae/defects and its resulting anomalies, in the provisions of *Qisas & Diyat*, as incorporated in Chapter XVI of the PPC (dealing with the offences affecting human body and life) and corresponding sections in Cr. P.C. and *Qanoon-e-Shahadat*, 1984 resulting in adverse effects on women's rights and status in Pakistan.
- Formulation of policy recommendations for the Government of Pakistan to bring necessary changes/amendments in the said legislation according to the correct interpretation of Islamic injunctions, ensuring removal of defects and any discrimination against women.

IV. Scope of the Research

After a thorough analysis of the provisions of *Qisas and Diyat* in the PPC and corresponding sections in Cr.PC, Evidence Act (*Qanoon-e-Shahadat*, 1984), Constitution of Pakistan, 1973, etc., data (collected from the Police Departments and Courts), judgments of the Courts and

religious, legislative, judicial and socio-economic aspects of different social practices like 'honour' killing, *vani* and *swara*, etc., in Pakistan following issues have emerged.

- i. Whether the offences under *Qisas & Diyat*, as spelled out in *Shar'iah* are directed against the legal order of the state or against the person victimised?
- ii. Whether the compounding of murder committed in the name of 'honour' (*ghairat*) is Islamic?
- iii. Whether the waiver of the right to *Qisas* or compounding of offence **at any stage by any one of the legal heirs** is Islamic, particularly, when the crime is alleged to have been committed in the **name of 'honour or 'ghairat'**;
- iv. Could the waiver of the right to *Qisas* or the compounding of offence by the women victims of violence be considered Islamic and be allowed by the courts?
- v. Whether the exemption from *Qisas* to the following persons is Islamic?
 - a) if an offender is guilty of committing murder of **his** child, or grandchild how low-so-ever u/s 306(b), PPC;
 - b) if any *wali* of the victim is a direct descendent, (how so-ever low), of the offender u/s 306[©] PPC.

- vi. Whether the mode for the disbursement of *Diyat* among heirs of the victims according to their respective shares in inheritance as provided u/s 330 of Pakistan Penal Code is Islamic and valid?

- vii. a) Whether *Vani* or *Swara* i.e. giving of a female relative of the accused in marriage as *badl-e-sulh* is invalid, (as declared invalid u/s 310, PPC) or **void** or **illegal** in Islam?

- b) What punishment can be prescribed for *Vani* / *Swara* (ref. proviso to section 310 PPC) or similar practices in violation of law?

(in 2005 PPC was amended and punishment provided for this crime is minimum 3 years and maximum 10 years)

- viii. Can the provisions relating to *Qisas & Diyat* be applicable to non-Muslims living in an Islamic country?

- ix. Is it possible to meet the criteria of *Tazkiyah-al-Shuhood* as required for *Qatl-e-amd* and hurt u/s 304, PPC read with Article 17 of *Qanoon-e-Shahadat*?

- x. What measures should be adopted to curb the social evils of ‘Honour killings’ and *Swara* / *Vani* and similar practices prevalent in Pakistan?

Answer to these questions will form the basis for recommendations.

Chapter Two

I. The Concept of Justice in Islam

The subject law is made or conceptualized to do justice to the citizens of the country. Pakistan being an Islamic State as per Constitution, the first and most important subject to be discussed is the concept of justice in Islam.

Allah Rab-ul-Izzat, the Master of the Universe Himself is an *Adil* (Judge). His Divine Justice is manifested in everything from the system of the universe to that of a tiny atom.

Justice is one of the causes for the creation of earth, as it is ordained that:

Allah created the heavens and the earth for just ends, and in order that each soul may find the recompense of what it has earned, and none of them be wronged.”³

وَخَلَقَ اللَّهُ السَّمَوَاتِ وَالْأَرْضَ بِالْحَقِّ
وَلِيُجْزَى كُلُّ نَفْسٍ بِمَا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ ۝

“The Holy “Qur’an,” does not give a dictionary definition of justice, but it links the concept to the notions of balance, equity,⁴ righteousness,⁵ proper measuring, truth,⁶ personal growth and development and the state of natural order. It contrasts justice with transgression, oppression, evil, falsehood⁷ and the disturbance in the natural order (*fitnah*).^{6, 7}

³ Surah Al Jathiyah, 45:22, Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

⁴ Al An’am 6:152, Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

⁵ Al Hadid 57:25, Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

⁶ Al Jathiyah 45:22, Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

⁷ Al Imran 3:25; Al An’am 6:160; Al Yusuf 10:47; Al Nahl 16:111, Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

The concept of justice is “usually related to, and connected with, the concept of “equality.” In the eyes of law it means that the ‘law’ should treat those people equally who adhere to its rules and norms, regardless of their social, political or economic status,”⁸ as it is ordained that: “Allah doth command you to render back your trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice:”⁹

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ
إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ
أَنْ تَحْكُمُوا بِالْعَدْلِ ط

The Muslims are directed to “make peace between them with justice, and be fair: For Allah loves those who are fair (and just).”¹⁰

فَاصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا
إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ٥

The first and foremost source of Islamic justice system and law is the Holy Qur’an. It was revealed gradually over a period of some two decades and its application was done by rejecting, modifying, condoning or accepting the prevalent socio-cultural and economic norms as deemed compatible with the new set of social norms enshrined in the Holy Qur’an. Therefore, in order to gain a proper understanding of the laws, this must be understood in the context of the revelation of each of its verse.

Allah’s message and its relevance to humans are reflected in the two key words/phrase i.e. ‘*Ad-Din*’ and ‘*Al-Islam*,’ as mentioned in *Surah Al Mai’da*¹¹ as follows:

وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا ط

⁸ Zayd, Prof. Dr., Nasr Abu, Article: ‘The Qur’anic Concept of Justice,’ sent to the NCSW personally.

⁹ Surah Al Nisa, 4:58, Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

¹⁰ Surah Al Hujurat, 49:9, Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

¹¹ Surah Al Mai’da, (5:3), ‘Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

“And have chosen for you Islam as your religion.”

Adis Duderiji writes that “the word *deen*, is most widely acknowledged by the lexicographers of the Arabic language of the time as possessing a multitude of meanings including, power, supremacy, dominion, law, constitution, government, sovereignty, obedience, allegiance, submission, habit, and accountability.”

In the Quran, this word has been used in the sense of set of laws one submits to

(2/131-132), *Deen-ul-malik* - “the law of the King” (24:2), *Deen-illahi* “law of Allah ” (24:2), in verse 82:17-19 the Qur'an speaks about the *yaumi-id-deen* or Day of Judgment when the affairs of the mankind will be decided solely in accordance with the laws of Allah and no human being will have any authority and power to act otherwise. As such, God is *Maliki-yawmi-deen*, the Master of the Day of Judgment (in 5:3 as already mentioned the word *al-islam* has been defined as *deen*.) Thus, the word ‘*deen*’ can be best thought of as a code of life, a social system, law / constitution prescribed by Allah for the humankind, according to which God alone has the power and authority to regulate human freedoms by drawing boundaries which are in accordance with God's unalterable laws.

The aim of these laws and social system can conveniently be understood by analyzing the meaning of the word ‘Islam’ from some of the following basic meanings attached to the root of the word from which the word Islam is derived:

- “purification of all defects and shortcomings, perfection and completeness
- safety from all dangers, accidents or mishaps
- means by which someone can reach heights with confidence
- one who lives with and maintains peace and order
- obedience to, bow or to surrender willingly with humility and softness
- adopting a balanced life/ taking up a middle path not going to either extreme
- system under which efforts bear fruit

- beauty and elegance.”¹²

The objective of the Holy Qur'an is to provide guidance to human beings to create conditions and to adopt a social system which in the words of a Muslim scholar Perwez (as quoted by Adis Duderiji in the above article), is as follows :

- “remove all of the personal shortcomings and enable him/her to develop her or his potentials fully
- allow the person to remain safe from all dangers, catastrophes and degradations in life
- enable a person to march towards higher evolutionary stages of life
- permit a person to lead, promote and help maintain peace and order in the whole world and thus allow humans to live in harmony with one another.”

The achievement of the above conditions is possible only when people willingly surrender in totality to eternal, unalterable divine laws and opt for a fruitful life resulting beauty, balance and excellence not only in their personal life but for the entire humankind.

Conclusion: It can conveniently be deduced from the above discussion that the concept of justice occupies a pivotal position in the overall Qur'anic worldview. An analysis of the different dimensions of divine justice reveals that on the one hand, Allah *Rab-ul-Izzat* is most merciful and generous because He rewards His creatures for their good deeds but on the other hand, He has prescribed severe punishments for the transgressors.

¹² Adis Duderiji, Article: ‘An Understanding of the Concept of Justice from the Qur’anic Perspective’, Australia, aduderij@tartarus.uwa.au: Source: <http://www.understanding-islam.com>

1. Islamic Criminal Justice System

Under Islamic Jurisprudence, every crime¹³ involves either Right of Allah (*Haqooq Allah*) or Right of people (*Haqooq-ul-Ibad*) or both. Thus the crimes are accordingly classified into the following three categories / groups:

- (1) *Haddood*
- (2) *Qisas & Diyat*
- (3) *Tazir*

a. Hadd (pl. Hudood)

According to Dr. Tanzil-ur-Rehman, the word “*Hadd*” in the strict legal sense, expresses Allah’s restrictive ordinances par excellence, the fixed punishments, which have been prescribed by the Holy Qur’an. It also means an essential limit to certain things, by which it is distinguished.”¹⁴

The *Hadd* punishments are inflicted upon the violation of the rights of Allah and they are aimed to benefit the entire society.¹⁵ Consequently they are meant for the offences against the society that disturb peace and public tranquility such as the offence of theft, robbery, dacoity, illegal sexual intercourse, *qazf*, etc.

Conclusion: Since the predominant ingredient of *Hudood* is the violation of *Haqooq Allah*, it is, therefore, to exact and enforce *Hadd* is right of Allah. The state or individual cannot interfere or change *Hadd* punishments.

¹³ It is defined as an act, the performance of which is prohibited by the Shar’iah (Islamic law) or non-performance of action obligated by the Shar’iah

¹⁴ Dr. Tanzil-ur-Rehman, ‘Crime and Punishment in Islam’ PLD 1980, Journal, 124

¹⁵ Rashid Ahmed, lecturer, Sheikh Zaiyed Centre of Islamic Studies, University of Peshawar: Opinion expressed in consultation meeting on Qisas and Diyat Law, held on 25th March 2004, in Peshawar.

b. Qisas

The word ‘*Qisas*’ is derived from ‘*Qasas*,’¹⁶ which means story, tale, narration, to relate or to follow.¹⁷ It is also termed as the law of retaliation and is defined as the punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing offender’s death, in the case of his committing murder.

The Holy Qur’an has termed ‘*Qisas*,’ a ‘life’ for the humanity, as it is ordained that “in the law of equality there is (saving of) life to you, O, ye men of understanding; That ye may restrain yourselves.”¹⁸

وَلَكُمْ فِي الْقِصَاصِ حَيٰوةٌ
يَاۤأَيُّهَا الْاٰلۡبَابِ
لَعَلَّكُمْ تَتَّقُوْنَ

According to imam Ameen Ahsan Islahi (Tadabur-e-Qur’an) following duties have been imposed on the community with reference to this crime:

1. “Each incident of murder must generate a wave of anxiety until and unless *Qisas* is taken. Each person must feel that he has been driven insecure”
2. The whole community must find out the offender as murder is the killing of the whole people.
3. No one should overlook the situation if someone is in danger.

¹⁶ Syed Afzal Haider is an Advocate Supreme Court and a religious scholar. He expressed his views in the consultation session on the subject research held in Punjab on 17th November 2004

¹⁷ Arabic –English Dictionary of the Modern Literary Language, compiled and arranged by Maan Z. Madina, available at Darul-Ishaat, Karachi-1

¹⁸ Surah Al Baqrah (2: 179), Al Qur’an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

4. If someone hides the criminal, gives wrong evidence, undertakes surety for the criminal or supports/protects the criminal, it is as if he is supporting the murderer of his own father, brother or son.
5. Helping the legal heirs in obtaining *Qisas* is actually giving life to the victim, as the Holy Qur'an states in *Sura Al Baqra* verse 179.¹⁹

Syed Afzal Haider²⁰ holds a similar opinion. According to him '*Qisas*' is not "just eye for an eye", but it is also to follow the crime to its logical conclusion.

Conclusion: *Qisas* is not just infliction of equal punishment to the offender but it is meant to ensure justice.

c. *Diyat* (blood money)

It is a compensation, which the relatives/dependant of the murdered victim may demand to compound the offence of murder. Its quantity, nature and other related affairs have been left by the Holy Qur'an to be decided by the Muslim community in accordance with the customs and traditions of the society. Accordingly, Prophet Muhammad ﷺ and his rightly guided caliphs decided all the cases of *Diyat* according to the customs and traditions of their period.

The objective of this option of compounding the offence of murder is to maintain peace on earth, save human life and to compensate the victim's dependants/relatives for the monetary loss sustained by them.

¹⁹ Quoted by Javed Ahmed Ghamidi (in urdu), 'Mezan,' page p.291, Dar-ul-Ishraq, 123 B, Model Town, Lahore

²⁰ Syed Afzal Haider: Advocate Supreme Court and a Religious Scholar, Pakistan.

A tradition narrated by ‘Abu Hurairah, provides that “the relative of the killed person has the right to choose one of two compensations i.e., to have the killer killed, or to accept blood-money.”²¹

According to tradition reported by Hazrat Ayesha, the procedure for compounding the offence is that “the one who is nearer should forgive first and then the one who is next to him, even if (the one who forgives) was a woman.”²²

There are a number of traditions with reference to the payment of *Diyat* under different situations. No compensation, however, is required to be paid in the case of a man being killed by animals or for the one who has been killed accidentally by falling into a well, for the one killed in a mine²³ or for any damage caused by an animal’s kick, but if the rider of the animal pulled the rein (causing the animal to turn and damage something with its feet), the rider is responsible.²⁴

Retaliation by the family of the victim, after acceptance of blood-money is strictly prohibited as ‘Abdullah reported, Prophet ﷺ saying: “I will not forgive anyone who kills after accepting blood-wit.”²⁵

The law of *Qisas* and *Diyat* in respect to both, intentional and unintentional offences relating to human body and life have been clearly spelled out in the Holy Qur’an. The period and the context of revelation of the relevant verses

²¹ 6880, Chapter 8, Sahih Al Bukhari, Translation into English by Dr. Mahmood Matraji, Corrected & Revised by F. Amira Zrein Matraji, Vol.IX, Darul-Isha’at, Karachi

²² 4523, Kitab al-Diyat, Chapter 694, Sunan Abu Dawud, translation with explanatory notes by Prof. Ahmad Hasan, Vol.III, S. Muhammad Ashraf, Publishers and Booksellers, Lahore-Pakistan, Page 1273.

²³ 6912, Sahih Al-Bukhari, rendered into English by Dr. Mahmood Materaji, corrected and revised by F.Amira Zrein Matraji, Vol-IX, Darul-Ishaat, Karachi-Pakistan, page 58

²⁴ Chapter 29, Sahih Al-Bukhari, rendered into English by Dr. Mahmood Materaji, corrected and revised by F.Amira Zrein Matraji, Vol-IX, Darul-Ishaat, Karachi-Pakistan, page 58-59

²⁵ 4492, Kitab al-Diyat, Sunan Abu Dawud, English translation with explanatory notes by Prof. Ahmad Hasan, Vol.III, S. Muhammad Ashraf, Publishers and Booksellers, Lahore-Pakistan, Page 1262

reflect directions for the stateless societies as well as the societies with a proper state system.

For the stateless societies, in *Surah Al Isra* (revealed prior to the formation of state in Mecca) the *wali* of the victim has been authorized to take *Qisas* from the offender in the following words:

“Nor take life – which Allah hath made sacred – Except for just cause. And if anyone is slain wrongfully, we have given his/her heirs authority (to demand *Qisas* or to forgive): but let him not exceed bounds in the manner of taking life: for he is helped (by the Law).²⁶

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ط وَ مَنْ قُتِلَ مَظْلُومًا
فَقَدْ جَعَلْنَا لَوَلِيِّهِ سُلْطَانًا فَلَا يُسْرِفُ فِي الْقَتْلِ ط إِنَّهُ كَانَ مَنْصُورًا ٥١

This verse clearly spells out that if a human being is killed then his legal heirs can take *Qisas* from the offender but they should not exceed in retaliation. The background of this verse is that in the tribal system, the people instead of taking *Qisas* from the offender would go to the extent of killing the family and would even burn the dead bodies.

According to Dr. Muhammad Farooq Khan, “though this verse was meant for the stateless society only, but unfortunately in the contemporary world too, some sections of the society, allowing the legal heirs to take *Qisas* from the offender draw their authority from this verse, which is wrong, as the same is not applicable in the current scenario.”²⁷

²⁶ Sura Al Isra' (17:33), Al Qur'an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

²⁷ Meeting dated 26th June 2004, to review the draft Report of 'The Concept of Justice in Islam re. Qisas and Diyat as a Part of PPC, 1860.'

For the Societies with proper state system, the Holy Qur'an provides a comprehensive system of justice and equity (*Adle-o-Ahsan*), by virtue of following verses revealed in Madina.

Surah Al Ma'ida: "Life for life, an eye for an eye, a nose for a nose, a ear for a ear, a tooth for a tooth, and for wounds equal for equal." But if anyone remits the retaliation by way of charity, it is an act of atonement for himself. And if

any one fails to judge by (the light of) what Allah hath revealed, they are (no better than) wrongdoers.²⁸

أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ
وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ ط فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ ط لَهُ
وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ ٥

Surah Al Baqrah: "O, ye who believe! the law of equality is prescribed to you. In cases of murder: the free for the free, the slave for the slave, woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude. This is a concession and a mercy from your Lord."²⁹

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ط
الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَىٰ بِالْأُنْثَىٰ ط فَمَنْ عَفَىٰ لَهُ
مِنْ أَخِيهِ شَيْئًا فَاتَّبَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ط
ذَٰلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ط

²⁸ Surah Al Ma'idah (5:45), Al Qur'an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

²⁹ Surah Al Baqra (2:178), Al Qur'an, text, translation & Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers & Booksellers, Lahore, Pakistan

While referring to the above verse Ibne Abbas added, that “forgiveness in this verse, means to accept the blood-money in an **intentional murder**.”³⁰

Surah Al Nisa, provides for the compensation to the family of the victim specifically in the case of murder by mistake, in the following words:

“Never should a believer kill a believer; but (if it so happens) **by mistake**, (compensation is due); If one (so) kills a believer, it is ordained that he should free a believing slave, and pay compensation to the deceased’s family, *unless they remit it freely*. If the deceased belonged to a people at war with you and he was a believer, the freeing of a believing slave (is enough). If he belonged to a people with whom ye have a treaty of mutual alliance, compensation should be paid to his family, and a believing slave be freed. For those who find this beyond their means, (is prescribed) a fast for two months running: by way of repentance to Allah; for Allah hath all knowledge and all wisdom.”³¹

مَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ
رَقَبَةٍ مُؤْمِنَةٍ وَدِيَّةٌ مُسْلَمَةٌ إِلَى أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا ط فَإِنْ كَانَ مِنْ
قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ ط وَإِنْ كَانَ مِنْ قَوْمٍ
بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَّةٌ مُسْلَمَةٌ إِلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ ط
فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ ز تَوْبَةً مِنَ اللَّهِ ط وَكَانَ
اللَّهُ عَلِيمًا حَكِيمًا ٥

³⁰ 6881, Sahih Al Bukhari, Translation into English by Dr. Mahmood Matraji, Corrected & Revised by F. Amira Zrein Matraji, Vol.IX, Darul-Isha’at, Karachi

³¹ Surah Al Nisa (4:92), ‘The Holy Qur’an, Text, Translation and Commentary’ Abdullah Yousuf Ali, , Sh. Muhammad Ashraf Publishers and Booksellers

In view of the above Islamic injunctions, it is clear that the law of *Qisas* and *Diyat* is a perfect concept of justice and equity (*‘Adl-o-Ahsan*).’ It is gender neutral and colour blind in its application, because no discrimination is made between a man and a woman, free men, women and slave, Muslim and non-Muslim.

By virtue of a tradition reported by Samurah, the Prophet ﷺ said “if anyone kills his slave, we shall kill him, and if anyone cuts off the nose of his slave, we shall cut off his nose.”³² The surviving victim or his dependants/relatives (in case of victim’s death) may even forgive the offender without accepting compensation, which could even avert capital punishment and leaves the door open to compassion and forgiveness, which is described as *‘takhfif min rabbikum’* i.e. reduction or remission from the Merciful Lord).

The bona fide intention of the party, however, is imperative in compounding the offence.

Abdullah Yusuf Ali, expresses his opinion that “the demand (of *Diyat*/compensation) should be such that it can be met by the party concerned i.e., within his means, and reasonable according to justice and good conscience. For example, a demand could not be made affecting the honour of a woman or a man. Also the whole penalty can be remitted if the aggrieved party agrees, out of brotherly love. In meeting that demand, the culprit or his friends should equally be generous and recognise the good will of the other side. There should be no subterfuge, or bribes, no unseemly play; otherwise the whole intention of mercy and peace is lost.”³³

Conclusion:

The above discussion leads us to conclude that although the element of forgiveness and mercy is strong in Islam, yet the offender is not allowed to go scot-free without being punished for the

³² 4501, Kitab al-Diyat, Sunan Abu Dawud, English translation with explanatory notes by Prof. Ahmad Hasan, Vol.III, S. Muhammad Ashraf, Publishers and Booksellers, Lahore-Pakistan, Page 1265

³³ Abdullah Yousuf Ali, ‘The Holy Qur’an, Text, Translation and Commentary’, Vol.I, Sh. Muhammad Ashraf Publishers and Booksellers, Lahore, Pakistan, page 71

offence he has committed against the society, of course through due process of law.

d. Proof of Crimes involving Qisas

Under Islamic criminal justice system, as enshrined in the Holy Qur'an and authentic traditions (*Ahadith*), the proof of crime relating *Hadd* and *Qisas* includes voluntary confession, ocular and circumstantial evidence (as revealed in *Surah Yusuf*)³⁴

The Holy Qur'an does not specify any criteria based on sex, religion and fixed number of witnesses in respect of the matter of *Qisas* and *Diyat*.

However, according to Islamic jurists (*Fuqha*), the appreciation of evidence in cases involving *Hadd* or *Qisas*, will have to be done by keeping in view the specified number of witnesses and the standard thereof i.e. '*Tazkiyah al-shuhood*.' However, there is a difference of opinion amongst the scholars over the standard provided as *Tazkiyah-al-shuhood*.

Under the prevalent provisions of *Qisas* and *Diyat* in the PPC, if any offence affecting human body and life is not proved under section 304 PPC, (providing for voluntary confession of the accused or the evidence as required under Art. 17 of *Qanoon-e-Shahadat*, 1984) then the punishment shall be awarded under *Taz'ir*.

³⁴ Sura Yusuf, (12:25), 'The Holy Qur'an, Text, Translation and Commentary', Vol.I, Sh. Muhammad Ashraf Publishers and Booksellers, Lahore, Pakistan

This issue is discussed in detail below:

The word “*Tazir*” is derived from the word “*azar*” which means ‘to prevent; to respect, to reform’. “In its primitive sense, it means prohibition, and also instruction; in law it signifies an infliction undetermined in its degree by the law, on account of the right either of God, or of the individual; and the occasion of it is, any offence for which *Hadd* (or stated punishment) has not been appointed; whether that offence consists in word or deed”³⁵

By virtue of section 2(e) of *Zina* Ordinance it means “any punishment other than *Hadd*.”³⁶

In cases involving punishment under *taz’ir*, the prevalent mode and principles of appreciation of evidence including voluntary confession, eye-witness account or circumstantial evidence are followed.

Conclusion: Under the divine injunctions, circumstantial evidence is required for the proof of crimes involving hadd like *tazir* but the only difference between hadd and *taz’ir* is that hadd is a right of Allah Almighty and the punishment is specified in Quran, but *taz’ir* punishment is left to the discretion of judge.

II. Historical Background of the Enforcement of *Qisas* and *Diyat* Laws in Pakistan:

The incorporation of the provisions of *Qisas* and *Diyat* law in Pakistan Penal Code, 1860 was initiated in the year 1990. The background of this law is that in the Gul Hassan case,³⁷ the analysis of the provisions, relating to the offences against human

³⁵ Hedaya, English translated by Charles Hamilton, Premier Book House, Lahore

³⁶ Section 2(e), Offence of Zina (Enforcement of Hudood) Ordinance, (VII of 1979)

³⁷ Federation of Pakistan through Secretary, Ministry of Law and another v. Gul Hasan Khan, PLD 1989 SC 633.

PPC relating to offences against human body including section 302, PPC are repugnant to Injunctions of Islam as enshrined in the Holy Qur'an and *Sunnab* and held (page 642-643 of the judgment) that the decision of the Court shall be effective w.e.f. 23rd March 1990 whereby the provisions referred to herein above to extent they have been held to be repugnant to the injunctions of Islam, shall cease to have effect.

Two review petitions and miscellaneous petitions were filed thereafter. In this context, the learned Attorney-General of Pakistan in the case of Federation of Pakistan and another v. N.W.F.P. Government and others made the statement that the Government is in the process of promulgating the '*Qisas and Diyat Ordinance*,' which will be promulgated by 5th September, 1990 and he prayed that the review petitions may be disposed of in the light of his above statement, as these have become infructuous. Accordingly the Court passed the orders,³⁸ providing for the promulgation of a new ordinance with the provisions of *Qisas and Diyat*, on 5th September, 1990. The said provisions were further ordered to be effective w.e.f., 12th *Rabi-ul-Awwal* 1411 A.H."

Pursuant to the above court's order, the first *Qisas and Diyat Ordinance*³⁹ was promulgated vide Criminal Law (Second Amendment) Ordinance, 1990 on 5-09-1990 to be effective from 12 Rabi-ul-Awwal 1411 A.H. This ordinance caused amendment and substitution of the provisions of sections 53, 109 and 299 to 338. PPC, 1860, which were derived from British Common Law. Certain provisions of Pakistan Criminal Procedure Code were also amended to bring them in alignment with the amended provisions of Pakistan Penal Code.

The provisions of *Qisas and Diyat* were re-promulgated and enforced in the form of ordinance for 20 times from 1991 to 1996,⁴⁰ each time with some changes.

³⁸ Federation of Pakistan and another v. N.W.F.P. Government and others, PLD 1990 SC 1172

³⁹ The Criminal Law (2nd Amendment) Ordinance No.VII of 1990

⁴⁰ Ordinances: I of 1991, XVII of 1991, XXX of 1991, XLII of 1991, IV of 1992, X of 1992, XVII of 1992, IV of 1993, XII of 1993, XXXIX of 1993, XVII of 1994, XLI of 1994, LXXXIII of 1994, XV of 1995, LVI

The legislature ultimately accorded the approval to the ordinance No. CXIII of 1996 containing provisions of *Qisas* and *Diyat* on 11th April 1997 as Act II of 1997 called the Criminal (Amendment) Act, 1997.

III. A Quick Review of the Concept of *Qisas & Diyat* Incorporated in the PPC

The provisions of *Qisas* and *Diyat* law, as incorporated in the PPC, under Chapter XVI, in a nutshell deal with the offences affecting human body and life. They provide punishment of *Qisas*, which “means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed *Qatl-e-amd* in exercise of the right of the victim or a *wali*.”⁴¹

The following four categories of murder have been specified in PPC:

1. *Qatl Shibh-i-Amd*.⁴²
2. *Qatl-e-khata*⁴³
3. *Qatl-bis-Sabab*⁴⁴
4. *Qatl-e-amd*⁴⁵

of 1995, XCIX of 1995, V of 1996, LII of 1996, LXXX of 1996, CXIII of 1996. Source : Riaz Ahmed v. The State, 1998 SCMR 1729.

⁴¹ Sec.299(k) Pakistan Penal Code (PPC)

⁴² Section 315, PPC: “Whoever, with intent to cause harm to the body or mind of any person causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit *qatl shibh-i-amd*.”

⁴³ Section 318, PPC: : “Whoever, without any intention to cause the death of or cause harm to a person, causes death of such person, either by mistake of act or by mistake of fact, is said to commit *qatl-e-khata*.”

⁴⁴ Section 321, PPC: “Whoever, without any intention to cause the death of, or harm to, any person, is said to commit *qatl-bis-sabab*.”

⁴⁵ Section 300, PPC: “Whoever, with intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with

Two types of abortions i.e. *Isqat-i-Haml*⁴⁶ and *Isqat-i-janin*⁴⁷ in addition to several categories of hurt/injury, both intentional and unintentional have also been defined.

The basis of the above classification of murder, abortion and hurt/injury is *Fiqah* and not the Holy Qur'an except murder by mistake (*Qatl-e-Khata*).⁴⁸

All the offences affecting human life and body, under the subject law may, however, be waived or compounded⁴⁹ by the surviving victim or by all or any of the legal heirs of the murdered victim by accepting compensation, which is termed as follows:

1. *Diyat* (blood-money)
2. *Arsh*⁵⁰
3. *Daman*⁵¹

In the Holy Qur'an, however, only the word 'Diyat' has been used "*diyatun musallamatun ila ahlihi*", (مِثَاقٌ فَدِيَّةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ)⁵² which means compensation should

the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-e-amd."

⁴⁶ Whoever causes a woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman or providing necessary treatment to her, is said to cause *Isqat-i-haml*. **Explanation:** A woman who causes herself to miscarry is within the meaning of this section."

⁴⁷ Section 338B, PPC: "Whoever, causes a woman with a child some of whose limbs or organs have been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, is said to cause *Isqat-i-janin*. **Explanation:** A woman who causes herself to miscarry is within the meaning of this section."

⁴⁸ Surah Al Nisa (4:92), 'The Holy Qur'an,' Text, Translation and Commentary, Vol.I, Sh. Muhammad Ashraf Publishers and Booksellers

⁴⁹ Sec.338E, PPC.

⁵⁰ Section 299(b): 'Arsh' means the compensation specified in this Chapter to be paid by the offender to the victim or his heirs under this Chapter.

⁵¹ Section 299 (d) , PPC: 'Daman' means the compensation determined by the Court to be paid by the offender to the victim for causing hurt not liable to arsh.

Note: The word Daman is actually, 'Dhaman', Justice (retd.) Mian Qurban Sadiq Ikram, 'Law on Qisas and Diyat and its Application', PLD 1991, Journal, page 91

be paid to the victim's family while the terminologies like 'Arsh' and 'Daman' are not mentioned in Holy Qur'an.

1. Disputed Provisions

The review of *Qisas* and *Diyat* provisions as included in the P.P.C., on the touchstone of Qur'an and *Sunnah* (precepts and actions of the Holy Prophet ﷺ) revealed that the provisions identified and reproduced here-in-below, under 11 (eleven) rubrics are either contradictory to the injunctions of Islam or are not being enforced in the true spirit of Islam.

a. **"Section 302".** *Punishment of Qisas for Qatl-e-amd. Whoever commits Qatl-e-amd shall subject to the provisions of this chapter be;*

1. *punished with death or Qisas;*

b. Proof of Offences

i) **"Section 304"** *Proof of Qatl-e-amd liable to Qisas, etc.*

(1) *Proof of Qatl-e-amd liable to Qisas shall be in any of the following forms, namely:*

(a) *the accused makes before a Court competent to try the offence, a voluntary and true confession of the commission of the offence; or*

(b) *by the evidence as provided in Article 17 of the Qanun-e-Shahadat, 1984 (P.O. No.10 of 1984)*

⁵² Surah Al Nisa (4:92), 'The Holy Qur'an, Text, Translation and Commentary' Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers and Booksellers, Lahore, Pakistan

(2) *The provisions of sub-section (1) shall, mutatis mutandis, apply to hurt liable to Qisas.*

ii) *The provision of Article 17 of Qanoon-e-Shahadat, 1984, referred under section 302 (1)(b), herein above reads:*

(1) *The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah.*

(2) *Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law,*

a. *[...] ⁵³*

b. *In all other matters, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.*

c. Punishments under Ta'zir for Qatl-e-amd

“Section 302” Punishment of Qatl-e-amd - Whoever commits Qatl-e-amd shall, subject to the provisions of this Chapter be;

- *Punished with death or imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or*

⁵³ Clause (a) of Art. 17 (2) pertains to financial obligations hence not relevant to the subject.

- *punished with imprisonment of either description for a term, which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of Qisas is not applicable.*

d. Interpretation

Section 338 F In the interpretation and application of the provisions of this Chapter⁵⁴, and in respect of matters ancillary or akin thereto, the court shall be guided by the injunction of Islam as laid down in the Holy Qur'an and Sunnah.

e. The provisions of P.P.C. (Anglo-saxon law) and other laws related / linked to Qisas and Diyat provisions:

- *Plea of 'Grave and Sudden Provocation'*
- *General Exception: (Section 76-106), Chapter IV Pakistan Penal Code, 1860*
- *Article 121 of Qanoon-e-Shahadat, 1984:*

The burden of proving that the case of accused comes within exception. *When a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any of the General Exceptions⁵⁵ in the Pakistan Penal Code (Act XLV of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence is upon him, the Court shall presume the absence of such circumstances.*

⁵⁴ Chapter XVI of PPC dealing with the 'Offences Affecting the Human Body and Life,'

⁵⁵ General Exception (Section 76-106), Chapter IV Pakistan Penal Code, 1860

f. **Exemptions from Qisas**

- **“Section 306” Qatl-e-amd not liable to Qisas.**

Qatl-e-amd shall not be liable to Qisas in the following cases, namely:

(b) *when the offender causes the death of his child or grandchild how low-so-ever; and*

c) *when any wali of the victim is a direct descendent, how low-so-ever, of the offender*

- **Section 307 Cases in which Qisas for Qatl-e-amd shall not be enforced.**

1) *Qisas for Qatl-e-amd shall not be enforced in the following case, namely:*

© *when the right of Qisas devolves on the offender as a result of the death of the wali of the victim, or on the person who has no right of Qisas against the offender.*

g. **“Article 45” of the Constitution of Pakistan, 1973**

The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any Court, Tribunal or other authority.

h. Concept of wali

- “Section 299 (m)” “wali” means a person entitled to claim Qisas
- “Section 305”

Wali. In case of a qatl, the wali shall be

- a) the heirs of the victim, according to his personal law;*
- b) the government , if there is no heir.*

i. Compounding of Offences

- “Section 309” Waiver-Afw of Qisas in Qatl-e-amd
 - (1) In the case of Qatl-e-amd an adult sane wali may, at any time and without any compensation, waive his right of Qisas.*

Provided that the right of Qisas shall not be waved:

 - a) Where the Government is the Wali.*
 - b) Where the right of Qisas vests in a minor or insane.*
 - (2) where a victim has more than one wali, any one of them may waive his right of qisas*
- “Section 310” Compounding of Qisas (Sulh) in Qatl-e-amd:
 - (1) In the case of Qatl-e-amd, an adult sane wali may, at any time on accepting badl-i-sulh, compound his right of Qisas:*

Provided that a female shall not be given in marriage or otherwise in badl-i-sulh.

- **“Section 313(b)” Right of Qisas in Qatl-e-amd**

- (1) Where there is only one *wali*, he alone has the right of Qisas in Qatl-e-amd but, if there are more than one, the right of Qisas vests in each one of them.

If the victim

- b. has no wali other than a minor or insane or one of the wali is a minor or insane, the father or if he is not alive the paternal grandfather of such wali shall have the right of Qisas on his behalf:*

Provided that, if the minor or insane wali has no father or paternal grandfather, how high-so-ever, alive and no guardian has been appointed by the court, the Government shall have the right of Qisas on his behalf.

- **Sec. 338 E (1) Waiver or compounding of offences**

Subject to the provision of this Chapter⁵⁶ and section 345 of the Code of Criminal Procedure, 1898 (V of 1998), *all offences under this Chapter may be waived or compounded and the provisions of sections 309 and 310, shall mutatis mutandis, apply to the waiver or compounding of such offences.*

j. Mode for the disbursement of compensation

- **“Section 330” Disbursement of diyat**

The diyat shall be disbursed among the heirs of the victim according to their respective shares in inheritance.

⁵⁶ Chapter XVI of PPC

Provided that, where an heir forgoes his share, the diyat shall not be recovered to the extent of his share.

- **“Section 331(2)” Payment of diyat**

2) *Where a convict fails to pay diyat or any part thereof within the period specified in sub-section (1) the convict may be kept in jail dealt with in the same manner as if sentenced to simple imprisonment until the diyat is paid fully or may be released on bail if he furnishes security equivalent to the amount of diyat to the satisfaction of Court.*⁵⁷

- **“Section 337 Z” Disbursement of Arsh or Daman**

Disbursement of arsh and daman shall be payable to the victim or if the victim dies, to his heirs according to their respective shares in inheritance.

k. Application of the provisions of Qisas and Diyat on Non-Muslims

The prevalent law is silent on the point of the application of the provisions of *Qisas* and *Diyat* in P.P.C., on non-Muslims.

However since the criminal law is applicable to all the citizens and residents at the relevant time alike, it can be concluded that it is applicable to the non-muslims also.

Following are the additional factors that lead to the exploitation of women in Pakistan:

⁵⁷ This provision is contradictory to the injunctions of Islam but does not fall within the scope of the subject of this research study, hence is not being discussed. This Issue has, however, been taken up by the Council of Islamic Ideology.

1. The law has given vast discretionary power to the judiciary without defining any parameters to that effect;
2. The judges at the district court level are neither sensitized nor adequately trained in Shar'iah law;
3. Corrupt law enforcement mechanism;
4. Traditionally old and inefficient methods of investigation;
5. Lack of training and incentives to police on their good performance;
6. Lacunas in the overall substantive and procedural laws; and
7. Parallel judicial system like *panchayat / jirga*. Recently, Sindh High Court banned all trials conducted by *jirga* system in the province of Sindh,⁵⁸ but unfortunately this system is still in vogue in all parts of the country in spite of the ban.

Since the afore-mentioned provisions are termed Islamic hence, it would be pertinent to first determine their concurrence with the concept of justice in Islam, before we discuss their impact on the society.

⁵⁸ Daily Times, dated 29th April 2004

2. The Analysis of the Controversial Provisions, in the Light of the Concept of Justice in Islam

a. Punishment of *Qisas*

The law does not differentiate between *Qatl-e-amd* and ‘honour’ killing and provides punishment of death as *Qisas* for the said offence under section 302(a) of the PPC. However, the main point of our concern is that this punishment is hardly awarded particularly in the offences involving an element of ‘honour’ (*ghairat*). This is also evident inter alia from the statistics of the ‘honour’ killing cases reflecting a high rate of acquittal i.e. 92.0%, 43.13%, 91.4% and 71.97% in NWFP, Baluchistan, Sindh and Punjab, respectively.⁵⁹

The reason for this miscarriage of justice in dealing with the offence of ‘honour’ killings, apart from socio-economic aspects, is the multi-fold vagueness in the prevalent provisions of *Qisas* and *Diyat* in the P.P.C. and other relevant laws, which are being discussed below:

b. Proof of *Qatl-e-amd*, hurt/injury liable to *Qisas*:

Section 304 (1) (a), regarding the voluntary and true confession of the commission of offence, is no doubt an Islamic provision, but unfortunately it has been interpreted by the judiciary in such a manner that no conviction takes place on this ground, leading this provision to be *ipso facto* redundant for all practical purposes.

⁵⁹ Registered cases of ‘honour’ killing from 1997 to 30th May 2003, Statistics provided to NCSW by all the Police departments of Pakistan

In the opinion of the former Chief Justice of Pakistan Justice [®] Saeed-uz-Zaman Siddiqui, the convictions under this section rarely take place. ⁶⁰ This statement is true particularly in the cases involving element of '*ghairat*', e.g., the case of **Shamoon alias v. The State**,⁶¹ in which the trial court convicted the accused on the ground of confession, and awarded life imprisonment under section 302, PPC.

The Federal Shariat court maintained the conviction and sentence awarded to the appellant by the trial court. However, the Supreme Court held that:

“In these circumstances it was not open to the court below to have only that part of his statement under section 342, Cr.P.C. in which he admitted having killed the deceased Muhammad Yousuf and discard that part of his statement in which he stated that it was done under grave and sudden provocation as he had found the deceased in a compromising position with his wife in the early hours of morning.” The court reduced the sentence of the appellant from life imprisonment to the period already undergone by him.

As discussed earlier, the above judgment does not seem to be in accordance with the Islamic concept of Justice on two counts:

- a. In Islam, the confession is not subject to any condition, whatsoever; and
- b. The plea of 'grave and sudden provocation' is neither recognized in Islamic injunctions nor by the prevalent provisions of law.

⁶⁰ Chief Justice [®] Saeed-uz-Zaman Siddiqui, Consultation meeting on 'Qisas and Diyat law', organized by NCSW in Karachi.

⁶¹ Shamoon alias v. The State, 1995 SCMR 1377

Sub-section (1) (b) of Section 304, under discussion refers to Article 17 of *Qanoon-e-Shahadat*, stipulates the number and the competence of witness.

In continuation of above, for the purpose of evaluating the number and standard of witnesses pertaining to the matters of *Qisas* and *Diyat*, we will discuss the provisions of the above Article (18) clause-wise:

- **Sub-Section (1) of Article 17**, provides for the determination of the competence and the number of the witnesses in accordance with the injunctions of Islam as laid down in the Qur'an and *Sunnah*. According to our research findings, the islamic injunctions do not provide any specific standard or number of witnesses as a proof for the crimes punishable with *Qisas*.

In Islam, the testimony of the truth is the liability of each person of the Ummah (Muslim Community). The following verses clearly reflect that anyone who knows the truth of any kind, affecting the lives or interests of the other fellow beings, must firmly bear witness to the deed under all circumstances:

“And those who stand firm in their testimonies;”

وَالَّذِينَ هُمْ بِشَهَادَتِهِمْ قَائِمُونَ ۝

“Such shall be the honoured ones in the Gardens (of Bliss).”⁶²

أُولَٰئِكَ فِي جَنَّٰتٍ مُّكْرَمُونَ ۝

“Conceal not evidence; for whoever conceals it –

His heart is tainted with sin. And Allah knoweth all that ye do.”⁶³

⁶² Surah Al Ma'arij(70:33&35), 'The Holy Quran', Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers page 1529

وَلَا تَكْتُمُوا الشَّهَادَةَ ط
وَمَنْ يَكْتُمْهَا فَإِنَّهُ اِثْمٌ قَلْبُهُ ط
وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ ۝

“And cover not truth with falsehood, nor conceal

The Truth when ye know (what it is).”⁶⁴

وَلَا تَلْبِسُوا الْحَقَّ بِالْبَاطِلِ وَتَكْتُمُوا
الْحَقَّ وَانْتُمْ تَعْلَمُونَ ۝

“O, ye who believe! stand out firmly for Allah, as witnesses

to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from Justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do.”⁶⁵

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوِّمِينَ
لِلَّهِ شُهَدَاءَ بِالْقِسْطِ ۚ
وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ عَلَىٰ آلَا
تَعْدِلُوا إِعْدِلُوا ۚ هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۚ
وَ اتَّقُوا اللَّهَ ط

“And if they fail to judge by (the light of) what Allah

Hath revealed, they are (No better than) wrongdoers.”⁶⁶

⁶³ Surah al Baqarah (2:283) , ‘The Holy Quran’, Text, Translation and commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers page 119

⁶⁴ Surah Al Baqarah (2:42), , ‘The Holy Quran’, Text, Translation and commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers, Vol.I, page 27

⁶⁵ Surah Al Ma’ida, 5:8, Al Qur’an, translation by Abdullah Yousuf Ali

⁶⁶ Surah Al Ma’ida, 5:45, Al Qur’an, translation by Abdullah Yousuf Ali

وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ ط

So much importance is given to evidence so that it is ordained that

كُونُوا قَوْمِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ

⁶⁷which means ‘be just and give evidence

for Allah only, even if that goes against your own parents or relatives.’

Accordingly, Islam does not discriminate between men and women in this context.

Contrary to the provisions of *Hudood Ordinances*, in which the women’s evidence is excluded, the Islamic history witnessed the admissibility of the evidence of Hazrat Bibi Naila, Hazrat Usman’s wife, who was the only eye-witness of her husband’s murder. According to Islamic injunctions, the only person whose evidence is not admissible is the one who launches a charge of adultery against chaste women and fails to produce four witnesses in support of his allegation, as ordained in verses 24:4 of *Surah Al Nur*.

- **Sub-Section (2)** of the subject Article refers to the provisions of *Hudood Laws* or any other Special Law in this context. These are not applicable in the case of offences liable to *Qisas* for the following main reasons:

Firstly, the provisions for the number of witnesses, as provided under *Hudood Ordinances*, 1979 are not applicable to the provisions on the concept of *Qisas* and *Diyat* in PPC, because the said laws provide

different number of eye witnesses for different offences under the respective ordinances.⁶⁷

Secondly, with reference to the competence of witnesses or the standard of *Tazkiyah-al Shuhood* (purgation of witnesses), as provided under *Hudood Ordinances 1979*, witnesses ‘must be truthful persons and abstain from major sins,’⁶⁸ which is not supported by the Holy Qur’an and *Sunnah*.

This term is based on opinions of the jurists of the ages when the communities were smaller in size and it might have been convenient for the Qazi to investigate into the personal affairs of the witness but this is not possible in the contemporary age of globalization in which a city is populated by millions of people. The man-made law is required to evolve methodology with the passage of time in accordance with the changing conditions, within the defined principles of Islamic injunctions.

Even otherwise the above mentioned criterion of judging the credibility of a witness is unrealistic for the simple reason that it would never be possible to get a witness who has not committed a “major sin” as understood by Muslim jurists. According to Hazarat Abdullah Bin Umr, the Prophet ﷺ said that major sins include: Shirk

,disobedience to parents, killing and **false oaths**, in the following words:⁶⁹

⁶⁷ Section 9 (b) of Prohibition (Enforcement of Hadd) Order (iv) of 1979; Section 7 (b) of the Offence against Property (Enforcement of Hudood) Ordinance (VI of 1979); Section 9 (b), Offences of Zina (Enforcement of Hudood) Ordinance (VII of 1979)

⁶⁸ Section 8, Offence of Zina (Enforcement of Hudood) Ordinance, 1979

⁶⁹ 4018, Kitab Al Mahraba, Sunan Nisai, Translated by Maulana Fazal Ahmed, Darul Ishaat Lahore-Pakistan, page 109

حدیث ۴۰۱۸: حضرت عبداللہ بن عمر رضی اللہ عنہما آنحضرت صلی اللہ علیہ وسلم سے نقل کرتے ہیں کہ فرمایا: کبیرہ گناہ یہ ہیں۔ اللہ کے ساتھ شریک ٹھہرانا، والدین کی نافرمانی کرنا، قتل کرنا اور جھوٹی قسم کھانا۔

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ وَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْكَبَائِرُ الْإِشْرَاقُ بِاللَّهِ وَ عُفُوقُ الْوَالِدَيْنِ وَ قَتْلُ النَّفْسِ وَالْيَمِينُ الْعَمُوسُ.

According to some jurists even if a person has missed one collective prayer, he has committed major sin *gunah-e-kabira*.⁷⁰

In Dr. Farooq's opinion, no human being on earth can claim not to have committed a "sin" except the Prophets. Further, it is not possible and practical for the judiciary to investigate into the private life of any witness to ensure that he has not committed any major sin. This is one of the reasons why in most of the cases, the offenders instead of being punished with *Qisas* are awarded punishment under *taz'ir*, which is mostly nominal.

Though the chapter on the provision of *Qisas* and *Diyat* in the PPC has not specified the aforesaid criteria but even then the standard of evidence was considered necessary under Islamic dispensation of justice, as per decision in Sarfraz alias SAPPI's case,⁷¹ in which the witnesses were required to meet the criteria of '*tazkiyah-al-shahood*.'

The provision of '*tazkiyah-al-Shudood*,' is quite confusing in its application. This can be understood better from Abdus Salam's case,⁷² wherein the appeal was preferred against the impugned judgment dated

⁷⁰ Khaki Dr. Aslam, Advocate Supreme Court, Jurisconsultant Federal Shariat Court, meeting held on 10th August, 2004 with NCSW.

⁷¹ Sarfraz alias SAPPI & others v. The State, 2000 SCMR 1758

⁷² Abdus Salam v. The State, 2000 SCMR 338

20th December 1993, of the High Court of Baluchistan, which dismissed criminal appeal and confirmed the conviction of accused under Section 302(a), PPC for the murder of his mother and the sentence of death awarded to him by the trial court, session judge, Quetta.

In this case the accused killed his mother on her refusal to give him Rs.100/=. He admitted that he killed his mother but in the written argument submitted before the Session Judge, he took the plea of 'sudden and grave provocation' and alternatively pleaded to have committed the offence under the influence of drugs.

The learned session judge convicted the petitioner under section 302 of the chapter on '*Qisas* and *Diyat*' in the P.P.C. and awarded death penalty to him as *Qisas*, with the following observation:-

“The accused has pleaded guilty to the charge and he also admitted the commission of offence in his statement under section 342, Cr.P.C. Further 3 eye-witnesses have appeared and their statement has not been disputed, therefore, the *Qatl-e-amd* is proved as required by section 304, the PPC....”

On appeal, the Supreme Court reversed the judgment by awarding death penalty under *ta'zir* on the ground that “the evidence of the three witnesses did not satisfy the test provided in Article 17 of *Qanun-e-Shahadat*, 1984, as the said witnesses had not been subjected to the test of *Tazkiyah-al-Shahood*.”

The Supreme Court, in its judgement relied upon the cases:

- Manzoor v. State (1992 SCMR 2307) wherein it was held that:
“As regard it being a case of *Qatl-e-amd* liable to death by *Qisas* the requirement of the Islamic Law is that the witnesses must stand the test of *Tazkiyah-al-Shahood*,”
- Sanaullah v. The State (PLD 1991 FSC 186), in which Federal Shariat Court also held that:

“*Tazkiyah-al-Shahood* (تزكية الشهود) is obligatory in cases punishable with *Hadd* and *Qisas*, even if the competency of a witness is not challenged by the *Mashood Alaih* (مشهود عليه).⁷³” and
- Ghulam Ali v. The State (PLD 1986 SC 741) with ruling as under:

“Where proper *Tazkiyah-al-Shahood* (تزكية الشهود) was not done of an eye-witness, the conviction under Islamic Law could not be sustained.”

The Supreme Court judgment in Sarfraz’s case prompts us to the following questions:

1. Was the verdict fair, on the touchstone of the Qur’an and *Sunnah*?

⁷³ Mashood Alaih means defendant

2. Was the test of '*tazkiyah-al-shuhood*' mandatory in the case where the eye-witnesses were not even disputed by the defendant?
3. Though the application of the test of *tazkiyah-al-shuhood* was not mentioned in the judgement of the trial court but does that mean the trial court had not applied the test of *Tazkiyah-al-shuhood*?
4. Was the test of *tazkiyah-ul-shuhood* at all required when the trial Court was satisfied as to the credibility of the eye-witnesses and the same was not disputed by the respondent?

Addressing these few issues would certainly help us in enforcing the Islamic legislation in its true spirit. Firstly, according to jurists the word "*Tazkiyah*" means an institution of inquiry in the character of witnesses while "*Shuhood*" is an Arabic term which is used for witness in legal cases (Dictionary of Islam, p.670).⁷⁴

Secondly, though it is considered to be an obligation on the part of the Qazi to ascertain the righteousness of witnesses, which can either be open or secret yet it is certainly not mandatory when the court is satisfied as to the credibility of the witness(es).

Thirdly, every Muslim is credible unless proved otherwise or debarred from giving evidence on the grounds of his character (*mardood ud*

⁷⁴ Zafar Emmanuel, 'Law and Practice of Islamic Hodood', ed. 2002, Khyber Law Publishers, Lahore, page 318

shahadat) or prohibited from giving evidence owing to his disability (*mamnoon-us-Shahadat*), as for instance a child or an insane person.⁷⁵

Further Hudood Ordinances, 1979 also defines “*Tazkiyah-al-shuhood*” as ‘the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness’.⁷⁶ It can be used in assessing the true facts, provided the condition for assessing the competence of witness as given in *Hudood* Ordinance, discussed earlier, is not applied because this way, no one will meet the criteria and the offenders will not be prosecuted on the basis of ocular evidence.

- The provision of **Sub-Section (2)(b) of Art.17** of *Qanoon-e-Shahadat* provides for the testimony of one man and/or one woman and such other evidence as the circumstances of the case may warrant. This provision is not only in line with the globally accepted standards of evidence but also according to the Islamic injunctions as discussed earlier. But in view of the case studies, unfortunately it has not been applied in the matters of *Qisas*. In the case of punishment under *Qisas*, neither the evidence of women is admissible nor circumstantial evidences are considered valid. Consequently, the cases are mostly decided under *ta’zir*.

Other lacunae in the law of evidence

Apart from the above, the major problems with reference to ocular witnesses are as follows:

⁷⁵ Khaki Dr. Aslam, Advocate Supreme Court, Jurisconsultant Federal Shariat Court, meeting held on 10th August, 2004 with NCSW.

⁷⁶ Explanations to Section 9, Offences of Zina (Enforcement of Hudood) Ordinance (VII of 1979) and Section 7, Offences against Property (Enforcement of Hudood) Ordinance (VI of 1979)

1. The law does not provide any protection to the witnesses particularly in sensitive matters;
2. No investigation is held if the witness turns hostile;
3. No punishment is specified for the hostile witness.

With reference to ocular evidence, there is no need to have any particular number, sex and standard of witnesses. Any one knowing the truth must depose that for the sake of Allah even if that goes against ones' own person or relatives. The test of '*tazkiya-tul-Shahood*,' may be (not mandatory) applied by the court to satisfy itself as to the credibility of the witness. But that test must be framed on logical grounds and be in accordance with the circumstances of the case. Secondly, that test must be defined and recorded in the judgment, to ensure that justice is done.

Since the State is responsible for the life and property of its people, hence it must ensure safety to the witness and his/her family particularly in the cases of a sensitive nature.

In the absence of ocular evidence the circumstantial evidence must be taken into consideration, to decide the case on merit as 'a witness may lie but the circumstantial evidence does not.'

In view of Islamic injunctions (discussed above) and universally accepted principles of evidence, no case should be closed until all possible evidences are brought on record and the case is decided.

Conclusion: We can conveniently conclude from the above discussion that the divine law provides for the ocular as well as circumstantial evidence to prove the offence affecting human body and life.

c. Punishments under *Taz'ir*

The punishment under *ta'zir* is awarded in all such cases, which have not been proved in accordance with requirements of the proof as laid down in the law pertaining to Qisas & Diyat.

For the offence of murder, the punishments of *taz'ir* under section 302 (b) is death or life imprisonment and under section 302 (c) imprisonment of either description (simple or rigorous) for a term which may extend to twenty-five years.

Since, the law has not fixed any minimum limit for the award of imprisonment, in majority of 'honour' killing cases, if the offenders are at all punished, the average imprisonment for one or multiple murders has been not more than five years.

This trend of judicial leniency towards the convicts of heinous crimes is against the principles of Islamic judicial system because though the punishments under *taz'ir* are less than *Hadd*⁷⁷ but the objective of Hadd punishments is "to stop or deter the offender/criminal. In *Shar'iah*, the objective is to abolish (*sarzhish*) "sin."⁷⁸ In these punishments "the offender may be released in such a way that others may take a lesson and be deterred from committing such crimes."⁷⁹ The imprisonment of just a couple of years for two murders certainly cannot create the desired deterrence in the society.

⁷⁷ Niazi, Dr. Liaquat Ali Khan, Islamic Law of Tort, Lahore, Research Cell, Diyal Singh Library, 1988

⁷⁸ Abdul Rehman Al-Jaziri, 'Kitab-ul-Fiqh', Vol.5, page 757.

⁷⁹ Hashmi, Syed Muhammad Mateen, *Islami Huood*, Pindi Bhatian, Shoeba-e-Tasneef-o-Taleef, Anjuman-e-Islah-e-Musalameen, 1978

In *Shar'iah* law though the punishments under *ta'zir* are not fixed and the decision of these punishments rests on the judgment of the ruler or the courts but the Administrator (*wali-e-Amr*) is not left totally free in his discretion as the decisions must be in accordance with the principles of *shar'iah*.⁸⁰

Conclusion: The punishments under *taz'ir* are left to the discretion of judge, which is dependent on evidence and the interpretation of relevant laws. This also casts a duty on the parties and the lawyers to give correct facts and assist the courts honestly and diligently.

d. i) **Plea of 'Grave and Sudden Provocation'**

This provision was provided as exception 1 to Section 300, P.P.C., 1860, which though repealed on 5th September 1990 but is still considered to be one of the valid grounds for the grant of relief in cases involving an element of 'honour' (غیرت).

ii) **General Exception:** (Section 76-106), Chapter IV Pakistan Penal Code, 1860

Although general exceptions are not part of *Qisas* and *Diyat* provisions in the PPC yet relief had been extended to the offenders of 'honour' killings under this chapter on the ground of self defence, as was seen in

Muhammad Hanif's⁸¹ case, which we will discuss later under the heading of 'Court Decisions' after the incorporation of *Qisas* and *Diyat* provisions in the PPC.

⁸⁰ An Urdu translation of "Kitabul Ikhtiar", by Maulana Salamat Ali Khan, Lahore, Law Publishing Company

⁸¹ State v. Muhammad Hanif. 1992 SCMR 2047

Some of the following leading cases, decided pre and post promulgation of *Qisas* and *Diyat* Ordinance, 1990, are reflective of how the controversial provisions mentioned herein above were used to facilitate the offenders of ‘honour’ killing.

The trend of Court Decisions prior to the incorporation of *Qisas* and *Diyat* Provisions in the PPC

Muhammad Afzal’s case:⁸² In this case, though the ocular evidence was duly corroborated by the circumstantial evidence yet the plea of family honour was considered a valid and strong ground for grant of relief to the offender of ‘honour’ killing. The relevant paragraph of the judgement reads:

As regards the petition filed by Muhammad Afzal, it may be mentioned that on prosecution’s own showing Salabat had killed the deceased in order to rehabilitate his family honour. It was, therefore, not a fit case where capital sentence should have been awarded to Salabat.”

Kamal’s case,⁸³ In this case the majority view was that the accused killed his wife and her paramour on grave and sudden provocation finding them in compromising position hence not guilty of offence under S.302. The court considered an award of five years’ imprisonment (the period of imprisonment already undergone by him) adequate and good enough to meet the ends of justice in the circumstances.

Gul Hassan’s case:⁸⁴ As discussed earlier, this case was one of the major factors in the incorporation of the provisions of *Qisas* and *Diyat* in the PPC. But in this case too, the court considered the plea of grave and sudden provocation under the circumstances “when the deceased victim was committing an act which under the Islamic injunctions was punishable with death.”

⁸² Muhammad Afzal v. The State and another, 1987 SCMR 1864

⁸³ Kamal v. The State, PLD 1977 SC 153

⁸⁴ Federation of Pakistan v. Gul Hasan Khan, PLD 1989 SC 633

The ratio laid down in the above case was further endorsed in **State v. Abdul Waheed** 1992 PCr. LJ 1596.

e. Interpretation

The provision of section 338 F empowers the judiciary with a vast discretionary authority to interpret the provisions of Chapter XVI of the PPC dealing with the ‘Offences Affecting the Human Body and Life, and in respect of matters ancillary or akin thereto in the light of the injunction of Islam as laid down in the Holy Qur’an and *Sunnah*’. This provision provides solution to all problems, as the Holy Qur’an explained through *Sunnah* is a complete code of human rights. But unfortunately, neither the parameters for interpreting the Islamic injunctions had been laid down nor were the judiciary sensitized on human rights and trained in *Shariah* law. Consequently, the said provision could not be interpreted and applied in its true spirit and led to the miscarriage of justice.

The Trend of Court Decisions After the Incorporation of *Qisas* and *Diyat* Provisions in the PPC (5-9-1990)

The trend of giving concession to the offenders of ‘honour’ killings on the ground of provisions contained in the Anglo-Saxon law as for instance, ‘grave and sudden provocation’ or ‘right to self-defence,’ discussed hereinabove, however, continued even after the promulgation and incorporation of the provisions of *Qisas* and *Diyat* in the PPC. Some of the judgements relying on the same principle are discussed below:

Ghulam Yasin’s case:⁸⁵ In this case of ‘honour’ killing, the court held that ‘the provision of section 338-F of the P.P.C. does give some authority to courts to notice the

⁸⁵ Ghulam Yasin and 2 others vs. The State, PLD 1994 Lah. 392

injunctions of Islam on the subject of *Qatle* on account of *Ghairat* and to take benefit of the same while dealing with such cases'. On page 397 the Court quoted the following, which clearly prohibits 'honour' killing.

وَقَالَ وَرَأَدُ عَنِ الْمُغِيرَةِ قَالَ سَعْدُ بْنُ عُبَادَةَ لَوْ رَأَيْتُ رَجُلًا مَعَ امْرَأَتِي لَصَرَبْتُهُ بِالسَّيْفِ
غَيْرَ مُصْنِعٍ فَقَالَ النَّبِيُّ ﷺ أَتَعْجَبُونَ مِنْ غَيْرَةِ سَعْدٍ؟ لَأَنَا أَغْيَرُ مِنْهُ وَاللَّهِ
أَغْيَرُ مِنِّي.

وراد کہتے ہیں۔ مغیرہ سے روایت ہے کہ سعد بن عبادہ نے فرمایا اگر میں کسی شخص کو اپنی بیوی
کے پاس دیکھ لوں تو اسے تلوار سے مار دوں گا۔ آپ ﷺ نے فرمایا، صحابہ کیا تمہیں سعد کی غیرت سے
تجرب آتا ہے میں اس سے زیادہ غیرت والا ہوں اور اللہ مجھ سے زیادہ غیرت والا ہے۔

عُمَرُ بْنُ حَفْصٍ حَدَّثَنَا أَبِي حَدَّثَنَا الْأَعْمَشُ عَنْ شَقِيقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنِ النَّبِيِّ
ﷺ قَالَ: وَمَا مِنْ أَحَدٍ أَغْيَرُ مِنَ اللَّهِ، مِنْ أَجْلِ تِلْكَ حَرَمِ الْفَوَاحِشِ، وَمَا أَحَدٌ أَحَبُّ إِلَيْهِ
الْمَدْحُ مِنَ اللَّهِ.

عمر بن حفص اپنے باپ سے وہ اعمش سے وہ شقیق سے اور وہ عبد اللہ بن مسعود سے روایت کرتے ہیں کہ آنحضرت ﷺ
نے فرمایا تم میں کوئی شخص اللہ سے زیادہ غیرت والا نہیں ہے۔ اسی لیے اللہ نے فواحش کو حرام کر دیا
اور اللہ سے زیادہ کوئی اپنی تعریف کرنے والا نہیں ہے۔

عبد اللہ بن مسلمة عن مالک عن هشام عن ابیہ عن عائشہ ان رسول اللہ صلی اللہ علیہ وسلم
قال یا امته محمد ما احدا غیر من اللہ ان بری عبلاً او اُمتہ یزلی یا امته محمد لو تعلمون ما اعلم
لصحتکم قليلا ولبکیتم کثیرا

عبد اللہ بن مسلمہ مالک ہشام عروہ حضرت عائشہ سے روایت کرتے ہیں کہ رسول اللہ صلی اللہ علیہ وسلم نے فرمایا اے امت
محمدیہ جس وقت تم میں سے کوئی مرد یا عورت زنا کرتا ہو اس وقت اللہ سے بڑھ کر غیرت کسی کو نہیں آتی۔ اے امت محمدیہ! جو
کچھ میں جانتا ہوں تم بھی جان لو تو ہنسو تھوڑا اور روؤ زیادہ۔

موسیٰ بن اسماعیل حدثنا همام عن يحيى عن ابی سلمته ان عروہ بن الزبير حدثه عن امه اسماء
انها سمعت رسول الله صلى الله عليه وسلم يقول لاشئى اغير من الله وعن يحيى ان اباسلمته حدثه
ان اباهر يره حدثه انه سمع النبي صلى الله عليه وسلم

موسیٰ بن اسماعیل ہمام یحییٰ ابو سلمہ سے روایت کرتے ہیں کہ مجھ سے عروہ بن زبیر نے بیان کیا۔ وہ اپنی والدہ سے بیان کرتے
ہیں کہ انہوں نے آنحضرت ﷺ سے سنا کہ کوئی شخص اللہ سے بڑھ کر غیرت والا نہیں ہے۔ یہی کہتے ہیں کہ ابو سلمہ نے مجھ سے
بیان کیا کہ میں نے ابو ہریرہ کو یہ فرماتے ہوئے سنا کہ اس حدیث کو میں نے آنحضرت صلی اللہ علیہ وسلم سے سنا ہے۔

ابو نعیم حدثنا شبان عن يحيى عن ابی سلمته انه سمع اباهر يره عن النبي صلى الله عليه وسلم انه قال ان
الله يغار وغيرة الله ان ياتي الموء من ما حرم الله
ابو نعیم شبان یحییٰ ابو سلمہ حضرت ابو ہریرہ سے روایت کرتے ہیں کہ نبی صلی اللہ علیہ وسلم نے فرمایا کہ اللہ تعالیٰ غیرت کرتا ہے اور اللہ
کی غیرت یہ ہے کہ کوئی مومن حرام فعل کرے۔

But even then on page 397 of the judgement, the court laid down that:

“From the above-quoted *Abdeeth*, it is obvious that a *Qatl* committed on account of *Ghairat* is not the same thing as *Qatl-e-amd* pure and simple and the persons found guilty of *Qatl* committed on account of *Ghairat* do deserve concession which must be given to them.”

In this case the conviction of the three appellants was reduced from 25 years to 5 years each only, under section 302 ©/34, PPC on the ground that under the old law, such culpable homicides were termed as homicides committed under grave and sudden provocation and no such convict was ever punished with twenty-five years’ R.I.

Further, since the deceased had lost his life on account of his unlawful and immoral act, therefore, no compensation was directed to be paid to his heirs.

This judgement is *ipso facto* erroneous on three counts:

1. The verdict is totally against the clear Qur’anic verses and the *Abadith* relied upon by the Court itself.
2. The legal heirs of the murdered victim were denied the right to *Qisas* and compensation (*Diyat*), which is in contradiction to the clear injunctions of Qur’an and *Sunnah*.
3. The award of *Ta’zir* in this particular case was against the principles of Islamic laws prevalent at that time.

Similarly in **Ghulam Hussain alias Hussain Bakhsh's case**,⁸⁶ even the Supreme Court upheld the plea of 'grave and sudden provocation.'

In **Muhammad Rafique's case**⁸⁷ also, in which the appeal was preferred against the impugned judgment of additional district and session judge Mianwali dated 3-3-1991 by virtue of which Muhammad Rafiq appellant was convicted u/s 302 PPC and was awarded death sentence with a fine of Rs.10,000/= and in default of payment of fine to undergo RI for one year was reversed by Lahore High Court by acquitting the accused on the ground that a "Person who is otherwise stranger to a woman when sees her in the arms of another and loses control over the situation would be entitled to get benefit of Exception 1 S.300, PPC, in a particular society where social norms are observed strictly everywhere with no distinction."

The next case in line is that of **State v. Abdul Waheed and another**,⁸⁸ in which the Supreme Court Appellate Bench examined sections 302(a) and (c), PPC and held that a Qatl-e-amd by husband will attract punishment lesser than *Qisas*.

In **State v. Muhammad Hanif's case**,⁸⁹ the Supreme Appellate Court, held that the husband "as custodian of honour of his wife had the right to kill the deceased while he was engaged in sexual act with his wife and he had not earned liability of *Qisas* or *Tazir* or even *Diyat*."

Another case in line is that of judgment dated 1-2-1992 in **Ghulam Farid's**,⁹⁰ whereby the session judge Attock convicted the accused u/s 302 PPC for life imprisonment, which was reversed by Lahore High Court on the ground that:

⁸⁶ Ghulam Hussain alias Hussain Bakhsh vs. The State and another, PLD 1994 SC 31

⁸⁷ Muhammad Rafique vs. The State, PLD 1993 Lahore 848

⁸⁸ 1992 P.Cr.L.J. 1596

⁸⁹ State v. Muhammad Hanif. 1992 SCMR 2047

⁹⁰ Ghulam Farid vs. The State, 1997 P.Cr.L.J. 1411 [Lahore]

“ ‘Qatl’ committed on account of *Ghairat* is not equivalent to ‘Qatl-e-Amd’ pure and simple and cannot be punishable with *Qisas* and the persons found guilty of such *Qatle* are entitled to concession.”

The Court acquitted the accused while giving concession to him u/s 338F though, the only tradition relied upon was of Hazrat Umar [ؓ]. According to this, a man was brought to Hazrat Umar [ؓ] by relatives of another person saying that he had killed their brother. When Hazrat Umar [ؓ] asked the accused, he admitted by saying that he had struck the thighs of his wife with his sword and if the man was in those thighs he was not at fault. Upon confirmation Hazrat Umar [ؓ] asked them to let the man go and no punishment was awarded. (Fiqh-us-Sunnah by Syed Saqib, Vol.2, p.579 published by Darul Kut’b, Beruit, 1979).

This decision of the court seems to be against the basic principles of the interpretation of Islamic laws.

Another decision of this nature is seen in case of **Sardar Muhammad’s**,⁹¹ in which the court by holding that: “Murder committed after being overpowered by wave of family honour and *ghairat*, would be no offence,” acquitted the accused on committing double murders.

Similarly, in **Abdul Haque’s case**,⁹² in which an appeal was filed against the impugned order dated 22-12-1994 of the High Court of Baluchistan at Quetta, whereby death sentence was awarded for an offence under section 302, PPC. The Supreme Court converted the death sentence to imprisonment for life on the ground of “the plea of

⁹¹ Sardar Muhammad vs. The State, NLR 1999 Criminal 11

⁹² Abdul Haque v The State, PLD 1996 SC 1

grave and sudden provocation on account of abusive language that can be treated as mitigating circumstance in awarding sentence under *Ta'zir* even if this plea as such, is not available and does not get any protection in the new amended law.”

Ali Muhammad’s case,⁹³ is another example of relief to the offender of ‘honour’ killing on the ground of the right of private defence.

In this case the appeal was preferred against the impugned judgment dated 20th December 1992 of the Lahore High Court, by Ali Muhammad respondent (the accused) against his conviction and sentence under the repealed section 304, Part I of the PPC. The appeal was accepted and he was acquitted. The learned judge while considering the appeal held:

“the accused was, in my opinion, entitled to invoke the defence of self-defense based on Verse 34 of *Sura Al-Nisa* as interpreted by Justice Shafiur Rehman, J. in Muhammad Hanif’s case.”

The court acquitted the accused without awarding any punishment as according to the court, the offender had already undergone imprisonment from 3-11-1990 to 13-12-1992 (i.e. 2 years, one month and 10 days), which is sufficient to meet the ends of justice, though the maximum imprisonment u/s 302 © is twenty-five years.

While in **Sardar Muhammad’s case,**⁹⁴ the Court considered that the murder committed after being overpowered by wave of family honour and *ghairat*, would be no offence and the accused was acquitted for the murder of his wife and her paramour.

⁹³ Ali Muhammad v. Ali Muhammad, PLD 1996 SC 274

⁹⁴ Sardar Muhammad vs. The State NLR 1999 Criminal 11

Similarly in **Nazir's case**:⁹⁵ it was held that “In case of involving an element of “*Ghairat*” there is a tendency to justify imposition of lesser penalty”.

In **Muhammad Akram's case**,⁹⁶ also the court endorsed the plea of ‘honour’ killing in certain circumstances.

As discussed earlier, although the provisions of *Qisas* and *Diyat* have been inserted in the PPC, the judiciary in our country is neither sensitized on gender issues nor trained in *Shar'iah* laws. Most of the judges of district and session courts belong to the section of the society, which holds the old traditions contrary to the vision of Islam as enshrined in the Qur'an and *Sunnah*. Consequently, the decisions given by them are tainted with gender biases.

Some **positive change**, has, however, been observed in the general attitude of the judiciary towards ‘honour’ killing as it has condemned this tradition in some cases. For instance in **Ashiq Hussain's case**,⁹⁷ it was held that:

“No court could and no civilized human being should sanctify murders in the name of tradition, family honour or religion.”

However, the judiciary did endorse the applicability of the provisions of General Exception provided under Chapter IV of PPC in ‘honour’ killing cases.

Similarly the change is more significant in **Muhammad Saleem's case**, wherein the Supreme Court has held⁹⁸ that:

⁹⁵ Nazir & another vs. The State 2000 P.Cr.LJ. 175

⁹⁶ Muhammad Akram Khan vs. State, PLJ 2001 SC 29

⁹⁷ Ashiq Hussain vs. Abdul Hamed, 2002 P.Cr. L.J. 859 [Lahore]

“Nobody had the legal or moral right to take the life of a human being in the disguise of ‘*Ghairat*’. Conviction and sentence of death had been rightly and lawfully recorded against the accused by way of ‘*Tazir*.’”

But in this case too, the Court acknowledged the availability of the plea of ‘grave and sudden provocation’ as a valid ground for granting concession to the offender if he had seen the deceased in a compromising position.

Apart from the facilitating provisions for the crime of ‘honour killing’, as discussed above, exemption from *Qisas* has also been provided by the law.

The analysis is given below:

f. Exemptions from Qisas

The sections 306 and 307 of the PPC quoted earlier, identify certain classes of persons for exemption from *Qisas*, which is not in accordance with the Islamic injunctions. In Islam each individual has to pay for his deed, irrespective of relationship, caste, creed, colour or sex, etc. It is ordained:


“Life for life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds equal for equal. But if any one remits the retaliation by way of charity, it is an act of atonement for himself;”⁹⁹ and

“If ye who believe! The law of equality is prescribed to you.

In cases of murder: The free for the free, The slave for the slave, A woman for a woman”¹⁰⁰

⁹⁸ Muhammad Saleem vs. State, PLD 2002 SC 558

⁹⁹ Surah Al Mai’dah, (5:45), The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

According to *Ahl-e-Sunnat* (followers of Sunnah) intentional murder is not only *Gunah -e- Kabira* ‘  وکبر ‘ (major sin) but *Akbar-ul-Kabair* ‘ (Greater than the Greatest) sin.¹⁰¹

In contradiction to the above verses, some scholars extend the following *Ahadith* (traditions) in support of section 306 (b), which are being referred to below:

- i. Tradition reported by Ibn-e-Abbas ¹⁰² reveals that Prophet Muhammad ﷺ uttered exemption to a father or the murder of his son, in the following words:

<p>ابن عباس رضی اللہ تعالیٰ عنہ سے روایت ہے کہ آنحضرت صلی اللہ تعالیٰ علیہ وسلم نے فرمایا بیٹے کے بدلے والد قتل نہ کیا جاوے گا۔</p>	<p>حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ ثَنَا عَلِيُّ بْنُ مَسْهَرٍ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ عُمَرُ وَ بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ وَلَا يُقْتَلُ بِالْوَلَدِ الْوَالِدُ</p>
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This *hadith* has also been reported in Tirmizi Sharif¹⁰³ in the following words:

¹⁰⁰ Surah Al Baqrah, (2:178), The Holy Qur'an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

¹⁰¹ Explanatory note to Hadith 2621, 'Kitab al Diyat' Sunan Ibn-e-Majah Sharif, translated by Imam Allama Nawab Waheed-uz-Zaman Khan, Vol. II, Mehtab Khan (regd.), Lahore-Pakistan, page 420

¹⁰² 2661 Sunan Ibn e Majah sharif, translated by Imam Allama Nawab Waheed Uz Zaman Khan, Vol II, Mehtab Khan (regd), Lahore-Pakistan, page 442

¹⁰³ 1259 Jame Tirmizi, translated by Maulana Fazal Ahmed, Vol I, Darul Ishaat, Karachi -Pakistan page 551

حَدَّثَنَا عَلِيُّ بْنُ حَجْرٍ ثَنَا إِسْمَاعِيلُ بْنُ عَبَّاسٍ ثَنَا
 الْمَثْنَى بْنُ صَبَاحٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ
 عَنْ جَدِّهِ عَنْ سُرَاقَةَ بْنِ مَالِكٍ قَالَ حَضَرْتُ
 رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يُقِيدُ
 الْأَبَ مِنْ ابْنِهِ وَلَا يُقِيدُ الْإِبْنَ

حضرت سراقہ بن مالک روایت کرتے ہیں کہ میں نے رسول اللہ
 صلی اللہ علیہ وسلم کو دیکھا کہ آپ باپ پر بیٹے کے قتل میں قصاص
 قصاص نہیں دلوا یا کرتے تھے جبکہ بیٹے سے باپ کے قتل میں
 قصاص دلواتے تھے۔

]

The above tradition, however, is weak¹⁰⁴. Moulana Fazal Ahmed has expressed the same opinion in the following words¹⁰⁵:

اس حدیث کو ہم سراقہ کی روایت سے صرف اسی سند سے جانتے ہیں اور یہ سند صحیح نہیں چنانچہ اسماعیل بن عباس، مثنیٰ بن صباح سے نقل کرتے ہیں جو ضعیف ہیں پھر یہ حدیث ابو خالد احمر سے بھی منقول ہے وہ حجاج سے وہ عمرو بن شعیب سے وہ اپنے والد سے وہ ان کے دادا سے وہ عمر سے اور وہ آنحضرت صلی اللہ علیہ وسلم سے نقل کرتے ہیں۔ یہی حدیث عمرو بن شعیب سے مرسل بھی منقول ہے لیکن اس میں اضطراب ہے۔ علماء اسی حدیث پر عمل کرتے ہوئے کہتے ہیں کہ اگر کوئی باپ اپنے بیٹے کو قتل کر دے تو وہ قصاص میں قتل نہ کیا جائے گا اور اسی طرح باپ اگر بیٹے پر زنا کی تہمت لگائے تو اس پر حد قذف جاری نہ کی جائے۔

- ii. Another *Hadith* regarding the grant of exemption from *Qisas* to father (with incomplete reference), relied upon in Faqirullah case is as follows:¹⁰⁶

”اس بارے میں دلیل نبی کریم علیہ الصلوٰۃ والسلام سے مروی یہ حدیث ہے کہ آپؐ نے فرمایا کہ والد سے اس کی اولاد کا قصاص نہیں لیا جائے گا۔ اور والد اور اولاد کا لفظ ہر والد کو خواہ وہ کتنا ہی اوپر کا ہو ہر اولاد کو شامل کرتا ہے خواہ وہ کتنی ہی نیچے کی ہو، اگر مقتول کے وارثوں میں قاتل کا بیٹا یا اس کا پوتا ہو تو قصاص واجب نہ ہوگا۔ کیونکہ بیٹے کے لیے اس کے حصے کے قصاص کا واجب ہونا محال ہے، لہذا باقی ورثاء کے حق میں بھی واجب نہ ہوگا کیونکہ قصاص کے حصے کیے جاسکتے۔ اور سب کے واسطے واجب ہوگی۔“

¹⁰⁴ Explanatory note, Sunan Ibn e Majah Sharif, translated by Imam Allama Nawab Waheed uz Zaman Khan, Vol II, Mehtab Khan (regd), Lahore-Pakistan, page 442-443

¹⁰⁵ Explanatory note, Jame Tirmizi, translated by Maulana Fazal Ahmed, Vol I, Darul Ishaat, Karachi – Pakistan page 551

¹⁰⁶ Translation by Prof. Khan Muhammad Chawla ‘___to explore___,’ Markaz-e-Tehqeeq (Research Cell), Diyal Singh Trust Library, Nisbat Road, Lahore. Quoted on page 541 of Faqir ullah v. Khalil-Uz-Zaman and others, 2000 PSC (Crl.) 252

iii. Yet another tradition reported in Islamic *Qanun-e-Faujdari*, an Urdu translation of “*Kitabul Ikhtiar*,” edited by Maulana Salamat Ali Khan, Law Publishing Company, Katcheri Road, Lahore and relied upon in Faqirullah’s case,¹⁰⁷ reads:

وَمَنْ وَرَثَ قَصَا صَا عَلَى أَبِيهِ سَقَطَ وَلَا مَرُّ وَالِدَ جَدَّادُ
وَلَعْدَاكَ مِنْ أَىْ جِهَةٍ كَانُوا الْآبُ

iv. The argument of some scholars in support of section 306 is based on the deduction of *fiqah* (juristic interpretation) that father being ‘*asl*’ (original) can eliminate its extension (Tauseeh) i.e. child but vice versa is not possible.

According to some scholars, a father is a life giver hence the *Qisas* of his life cannot be taken upon killing his children.

Dr. Tanzil-ur-Rehman also writes that “there are also a few exceptions to the general rule of retaliation. For example, if the ascendant kills his own descendant, such as, if father kills his son, there would be no retaliation because the Prophet has said ‘retaliation must not be executed upon the parent for his off-spring.’ It is due to respect paid to a father in Islam.”¹⁰⁸

Accordingly, in judgments exemptions are granted to father for the murder of his children. As for instance, in the case of **Faqirullah**, the court held that “the Provisions of Sections.306[©] and 304 (a)& (b) P.P.C.

¹⁰⁷ Islamic Qanun-e-Faujdari, an Urdu translation of “*Kitabul Ikhtiar*,” edited by Maulana Salamat Ali Khan, Law Publishing Company, Katcheri Road, Lahore

¹⁰⁸ Dr. Tanzil-ur-Rehman, ‘Crime and Punishment in Islam’ PLD 1980, Journal, 124

are not violative of any Qur’anic text or the *Sunnah* of the Holy Prophet. ﷺ¹⁰⁹ Similarly in **Khalil-uz-Zaman’s case** the court granted exemption from *Qisas* to the offender, who was the father of the victim by holding that “no lawful authority/jurisdiction/power/ whatsoever to convict the accused under S.302, P.P.C. or impose penalty of death on him.”¹¹⁰

But neither Dr. Tanzil-ur-Rehman nor the courts in judgments cited herein above, have quoted any Qur’anic text or authentic *Abadith*, in support of their contention.

The provision under section 306 P.P.C. providing exemption from *Qisas* for *Qatal-e-Amd* are when an offender is a minor or insane. But in cases where the offender associates with himself in commission of crime a person not liable to *Qisas*, to save himself from punishment for the crime, such person cannot be exempted even when he is a wali of the victim who is direct descendent how low so ever. The exemptions u/s 306 & 307 PPC tantamount to giving a licence to the *wali* to kill the family members which is one of the causes of increase in the cases of honour killing.

Moreover, though by virtue of section 302(b) P.P.C, considering the facts and circumstances of the case, a death penalty may be awarded under *ta’zir*, if the proof in either of the forms specified in section 304, P.P.C., for *Qatal-e-Amd* liable for *Qisas* is not available, but even that can be compounded by the legal heirs of the victim, with the permission of the Court u/s 345 (2), Cr.P.C.,¹¹¹. This was decided in Faqirullah’s

¹⁰⁹ Faqir ullah vs. Khalil-uz-Zaman, 2000 PSC (Crl.) 252

¹¹⁰ Khalil-uz-Zaman vs. Supreme Appellate Court, Lahore & 4 others, PLD 1994 SC 885

¹¹¹ Section 345(2), Cr. P.C., reads: “The offences punishable under the sections of the Pakistan Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in

case,¹¹² wherein the Supreme Court observed that in order to waive death penalty under *tazir*, all the legal heirs must forgive the offender.

The point for discussion and deliberation is that the exemptions, as reflected in section 306 (b) & (c) and 307 are neither provided in the Holy Qur'an nor supported by any authentic *Abadith* (traditions) and Sunnah.

- v. In support of Sec. 307, the following reference is available in a treatise “*Qanun-e-Qisas and Diyat*,” compiled by a Special Committee of Egyptian Parliament called (*Shrooh Qanoon-us-Soobat*), edited by Dr. Mahmood Ahmad Ghazi and published by *Idara Tahqiqat-e-Islami*, Islamabad:¹¹³

"دفعہ ۱۹۴۔

درج ذیل احوال میں قصاص ساقط ہو جائے گا۔

ب۔ اگر ولی الدم اپنے کسی اصل (یعنی ماں باپ دادا دادی وغیرہ) پر عائد شدہ قصاص کا وارث بن جائے

The above *hadith* on which reliance has been placed in support of section 306 and 307, of the PPC, is weak and in derogation to the clear injunctions of the Holy Qur'an and Authentic *hadith*.

g. Article 45 of the Constitution of Pakistan, 1973

Apart from the above exemptions provided in the chapter on *Qisas* and *Diyat* in the P.P.C., the offender also has a chance to have his sentence remitted, suspended or commuted on the acceptance of his mercy petition by the President of Pakistan under

the third column of that table.” The compoundable offences under this section inter alia include Qatle-i-amd, Qatle under Ikrah-i-tam, Qatle-i-amd not liable to Qisas, Qatle-i-khata, Qatle-i-khata by rash or negligent driving, Qatle-bis-sabab, etc. This also includes assault, hurt / injury and other offences.

¹¹² Faqirullah vs. Khaliq-uz-Zaman 2000 PSC 2214

¹¹³ Quoted in Faqir ullah v. Khalil-Uz-Zaman and others, 2000 PSC (Crl.) 252

article 45 of the Constitution,¹¹⁴ which is again controversial as the President does not fall within the category of the *Wali*, as the administrator of the state under the parliamentary form of Government. This issue is also under consideration with the Council of Islamic Ideology. As laid down in its Annual Report 2001-02, page 79, the amendment in the said article is suggested as follows:

“45. The president shall have, except in cases under *Hudood* laws, including *Qisas* and *Diyat*, power to grant pardon, reprieve and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.”

However, the final opinion of the committee of the Council is awaited. Since, Islam has given the right to compound the offence to the *wali* of the victim only, hence it would be appropriate to understand the concept of *wali* in Islamic perspectives:

h. Concept of Wali

In the Holy Qur'an the word *Wali*, is used for a '*Sultan*', i.e. the leader, ruler, authority, etc.,¹¹⁵ as being vested with the authority to take decision. The Holy Qur'an has used this term in the sense of a 'Protector' in the following multi-dimensional contexts:

Allah as Wali

- “They will be of no use to thee in the sight. Of Allah: it is only Wrongdoers that stand as Protectors to one another; but Allah is the Protector of the Righteous.”¹¹⁶

¹¹⁴ Art. 45 of The Constitution of the Islamic Republic of Pakistan, 1973

¹¹⁵ Arabic-English Dictionary, compiled by Maan Z. Madina, 1st ed. 2001

¹¹⁶ Al Jathiya (45:19) , The Holy Qur'an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

- “But Allah hath full knowledge of your enemies: Allah is enough for a Protector, and Allah is enough for a Helper.”¹¹⁷
- “Say: “Who is it that can screen you from Allah if it be His wish to give you punishment or to give you mercy?” Nor will they find for themselves, besides Allah, any protector or helper.”¹¹⁸
- “Allah has indeed heard (and accepted) the statement of the woman who pleads with thee concerning her husband and carries her complaint (In prayer) to Allah: and Allah always hears the arguments between both sides among you: for Allah hears and sees (all things).”^{119 120}

Administrator of the State / Justice as ‘Wali’

The scholars hold the view that the ‘*wali*’ (the Administrator of State/justice) is sultan in the matters of *Qisas*, as Allah while addressing Prophet ﷺ, ordains that:

“And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)? – Men, women, and children, whose cry is: “Our Lord!

¹¹⁷ Al Nisa (4:45), The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

¹¹⁸ Al Ahzab (33:17), The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

¹¹⁹ Surah Mujadilah (58:1), The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

¹²⁰ The background of this surah, as discussed by Abdullah Yousuf,¹²⁰ is that a woman named ‘Khawlah bint Tha’labah, wife of Aws son of Samit was divorced according to an old Pagan custom termed as ‘Zihar.’ This custom was meant to divorce and free the husband from any responsibility for conjugal duties, but did not leave the wife free to leave the husband’s home, or to contract a second marriage. Such a custom was in any case degrading to a woman. It was particularly hard on Khawlah, for she loved her husband and pleaded that she had little children who she had no resources herself to support and whom under zihar her husband was not bound to support. She urged her plea to the Prophet ﷺ and in prayer to Allah. Her just plea was accepted, and this iniquitous custom, based on false words, was abolished.

rescue us from this town, whose people are oppressors; and raise from us from thee one who will protect; and raise for us thee one who will help!¹²¹”

Section 299(m) PPC, defines ‘*wali*’ as a person entitled to claim *Qisas*.¹²² (other than the person who murdered the victim). However by virtue of section 305 PPC, in case of murder the wali shall be the heir of the victim (according to victim’s personal law) and in the absence of any heir, the Government has been specified as *wali*.

i. Entitlement of the Right to take *Qisas* or *Diyat*

According to the Islamic injunctions the following persons are vested with the right to demand *Qisas* or compound the offence:

- ‘*Wali*’(leader or protector): as mentioned in *Surah Al Isra*.¹²³
- ‘*Akhi*’(brother): as ordained in *Surah Al Baqrah*.¹²⁴ Abdullah Yousuf clarifies that “the term brother is perfectly general; all men are brothers in Islam. In this, and in all questions of inheritance, females have similar rights of the heirs in the light of the larger brotherhood. In 2:178.179 we have the rights of the heirs to life (as it were): we proceed to the heirs to property.”¹²⁵

¹²¹ Surah Al Nisa (4:75) , The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

¹²² Section 299 (m) PPC.

¹²³ Sura Al Isra’ (17:33), The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

¹²⁴ Surah Al Baqra (2:178), The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

¹²⁵ Explanatory note: ‘The Holy Qur’an, Text, Translation & Commentary by Abdullah Yousuf, Sh. Muhammad Ashraf Publishers & Booksellers, Vol.I. page 71

- ‘*Abf*’ (family, relative, inhabitant, people, etc.):¹²⁶ as provided in *Surah Al Nisa*¹²⁷ the family of the deceased victim is authorized.
- ‘*Faman*’ (victim):¹²⁸ By virtue of *Surah Al Ma’ida*,¹²⁹ the victim of hurt/injury, is authorized to either take *Qisas* or compound the offence as the word ‘*faman*.’

We can conveniently deduce the following from the above discussion:

Firstly, the right to *Qisas* and *Diyat* is not vested with the legal heirs of the victim under all circumstances but it has to be exercised with reference to a particular situation;

Secondly, since the word ‘*wali*’ in the Holy Qur’an is used mostly in the sense of a leader or protector by Allah Almighty for Himself and for the Ruler (Prophet Muhammad ﷺ) hence the state is the main *wali* and not to be designated so only in the absence of legal heir of the victim. Even otherwise, in Islamic jurisprudence state is responsible for the protection of the lives and property of its people. It is bound to stand for every aggrieved person and is the *wali* of victim unlike the provision of section 299 of PPC wherein only the legal heirs of victim are designated as *wali* and under section 305 State is defined as *wali* only in the absence of heirs of victim.

Thirdly, in the cases where the family of the murdered victim is either related to the offender (e.g., in ‘honour’ killing cases) or have some vested interest, the state is

¹²⁶ Arabic-English Dictionary, compiled by Maan Z. Madina, Darul Ishaat, Karachi

¹²⁷ *Surah Al Nisa* (4:92), ‘The Holy Qur’an, Text, Translation and Commentary’ Abdullah Yousuf Ali, Sh. Muhammad Ashraf Publishers and Booksellers, Vol. I, page 214-215

¹²⁸ The word ‘*Faman*’ has been translated as ‘anyone’ by Abdullah Yousuf but according to Dr. Farooq Khan, here it is meant for the victim of hurt/injury.

¹²⁹ *Surah Al Ma’idah* (5:45), The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers

authorized to either take *Qisas* or compound the offence on behalf of the family or the murdered victim.

Fourthly, Since, the Holy Qur'an has used the word '*wali*' and not '*waris*', hence the presumption is that the complaint of murder can, not only be lodged by a *Waris* i.e. father, son, husband, daughter but it can also be by the state (represented by court, police, etc.)¹³⁰

In view of the above discussion provisions of PPC with reference to the definition of *wali* are not in accordance with the true spirit of Islam. Further the right to compound the offence, as provided in the P.P.C., is also not in line with the Qur'anic perspective.

This issue is analysed below:

j. Compounding of the Offences of Murder and Hurt/Injury

We will discuss this topic in detail under the following sub-heads:

- i) Entitlement and circumstances as to the right to compound the offence.
- ii) Stage for compounding of the offence and its conditions
- iii) Modalities for compounding of offence
- iv) Beneficiary(ies) of the amount of *Diyat* and the mode of disbursement

k. Entitlement to Compound the Offences

By virtue of section 310 (*Qisas* and *Diyat* provision) P.P.C., an adult sane *wali* may at any time compound his right of *Qisas* by accepting *Diyat*/compensation.

¹³⁰ Afzal Haider Syed, Advocate Supreme Court stated during the consultation meeting on the subject held in Lahore.

As discussed herein above, the concept of *wali* under Islam is very wide as different persons are designated as *wali* under different circumstances to ensure justice. On the contrary, according to the law of Qisas and Diyat the heirs of the victim according to their personal law are the wali and entitled to compound the offence of murder under all circumstances including the cases wherein they have vested interest with the offender, e.g. in honour killing cases. Samia Sarwar's case is an example wherein the brother as wali compounded the murder of the sister and parents went scot-free. It is only in the absence of the legal heirs of victim, that the Government is recognized to be the *wali* of the murdered victim.

This provision leads to multiple problems in the cases of murder or other violence by the family member(s), e.g., where a brother has killed his sister in the name of '*ghairat*', irrespective of the motive in reality, the compounding of the offence by the other relatives is inevitable. Thus the law instead of deterring, leads to encouraging the potential perpetrators. According to Dr. Muhammad Farooq Khan this crime falls within the ambit of the definition of '*fasad-fil-ard*' (mischief on earth), and must be non-compoundable. In all cases where murders take place in the name of '*Ghairat*' (honour killing) the state should be the *wali* of the first category instead of the legal heirs of the victim.

Another question arises as to whether Islam specifies any discrimination on the ground of sex in the context of *wali*?

The Holy Qur'an while authorizing the person to compound the subject offences has used the words '*Wali*', '*Ahl*', and '*Faman*'¹³¹ and '*Akhi*' (brother), which according to the scholars are used in the general sense. There is not even a single verse or *hadith* (tradition) that has ousted the women from being the *wali* of the victim. On the contrary, section 313 has totally disentitled the woman from being the *wali* on behalf of insane or minor *wali* of the victim by expressly providing father or grandfather in this

¹³¹ The word '*Faman*' has been translated as '*anyone*' by Abdullah Yousuf but according to Dr. Farooq Khan, here it is meant for the victim of hurt/injury.

context. Since the Quran and Sunnah do not limit / specify as to who can be the 'wali'; rather have preferred state as Wali, the provisions seems to be against the Quran and Sunnah.

Section 313 PPC is 'if the victim has no wali other than a minor or insane, the father or if he is not alive the paternal grand father of such wali shall have the right of Qisas on his behalf.'

1. Stage for the compounding of the offence and its conditions

The core objective of the entire Islamic Judicial System is 'justice,' and considering the objective of the law it is important that the proceedings of murder cases must continue as per law i.e. the evidence in the case must be recorded and case be concluded by awarding punishment. It is only after such conclusion of the case that the legal heirs of the victim be allowed to compound the offence by either forgiving the convict without any compensation or by accepting compensation (*Diyat*). Here again the condition is that it should be voluntary, and without any element of coercion or pressure of any kind. All the scholars agree on this mode for compounding of an offence.

Section 309 of PPC provides that an adult sane *wali* may at any time waive his right of *Qisas* for the compounding of offences. This is clearly against the Islamic principle of justice. *Qisas* can be compounded only when punishment is awarded. If at all it is allowed to be compounded earlier, there must be confession of the offender and the award of punishment, before compounding.

Surah Al Baqrah reflects the post remission measures by providing that if any of the parties take their revenge even after compounding the offence then they have to face a grave penalty from ALLAH. Similarly, if the relatives of the victim punish the offender after taking compensation, then legal proceedings must be initiated against such person(s).

m. Modalities for compounding of offence

It is important in compounding the offence that the demand made by the relatives of the murdered victim or the victim of hurt/injury should be such as can be met by the offender i.e. within his means and reasonable according to justice and good conscience. However it cannot be compounded at the cost of honour of a woman. The law prohibits giving women as 'Badl-e-Sulah' which is punishable.

Examples can be given of social evils like *swara* / *vani* or other similar practices in different parts of the country, wherein girl(s) are given in marriage as compensation (*badl-e-sulh*).

Giving of a woman as *badl-e-sulh* is also completely prohibited in Islam for the simple reason that this practice not only degrades the woman from the status of a human being to that of a commodity. But, in such cases the consent of the bride is considered immaterial, which negates the very basic condition of a marriage in Islam.

Another inhuman aspect in the practice of *swara/vani* is the giving of a child or even an unborn child in marriage as *badl-e-sulh* which is totally un-Islamic. By virtue of a tradition,¹³² the marriage of a child not yet born is void.

In Islam, no marriage can be considered valid unless both the bride and the bridegroom have freely consented to it. A tradition¹³³ narrated by Khansa' bint Khidam Al Ansariya that she was given in marriage by her father, without her consent and that she disliked this act. She went to Prophet Muhammad ﷺ and complained to him. He annulled her marriage.

¹³² 2098, Kitab al-Nikah, Chapter 694, Sunan Abu Dawud, translation with explanatory notes by Prof. Ahmad Hasan, Vol.II, S. Muhammad Ashraf, Publishers and Booksellers, Lahore-Pakistan, Page 563.

¹³³ 5138, Sahih Al-Bukhari, translation by Dr. Mahmood Matraji, corrected by F. Amir Zrein Matraji, Vol-VII, Darul-Ishaat, Karachi-Pakistan, page 75

According to other traditions (*Abadith*) reported by Hazrat Ayesha¹³⁴ رضى الله عنها Abu Hurairah رضى الله عنه¹³⁵ and Hazrat Umar Bin al-Khattab رضى الله عنه¹³⁶ bride's free consent for marriage is mandatory and in its absence the marriage should be annulled.

The above conditions are equally applicable to '*Watta Satta*' i.e. marriage in exchange (*Shighar*).¹³⁷ This is a pre-Islamic tradition which is strictly detested by Islam, as is evident from the traditions reported by Hazrat Ibne 'Umar¹³⁸ and Jabir b. 'Abdullah.¹³⁹ But unfortunately this practice is also in vogue in Pakistan and there is no legislation in Pakistan to check this social evil.

n. Mode for the Disbursement of *Diyat*

There is not a single injunction in Islam that provides the mode of disbursement of compensation to the legal heirs. Section 330 of the PPC provides for the application of the law of inheritance for the disbursement of the amount of *Diyat* among the heirs of the victims. The argument in its support extended by some jurists is that since the Holy Qur'an has given the right to demand *Qisas* or compound the offence, to the '*waris*'

¹³⁴ 1420, 1421, 1421R1, 1421R2, 'Kitab al-Nikah (Book of Marriage – 16), Sahih Muslim, Vol.II.B, rendered into English by Abdul Hamid Siddiqui, Sh. Muhammad Ashraf, Booksellers & Exporters, Lahore-Pakistan, Page 301-303

2078, Kitab al Nikah, Ch.686: Guardian in Marriage, Sunan Abu Dawud, English translation with explanatory notes by Prof. Ahmad Hasan, Vol. II, Sh. Muhammad Ashraf, Publishers & Booksellers, Lahore-Pakistan

¹³⁵ 2087 Sunan Abu Dawud: Kitab al-Nikah, English translation with explanatory notes by Prof. Ahmad Hasan, Vol.II, S. Muhammad Ashraf, Publishers and Booksellers, Lahore-Pakistan, Page 560, and 982, 'Abwab-un-Nikah, Jame Tirmizi, Translation by Moulana Fazal Ahmed, Darul Ishaat, Lahore-Pakistan

5136, Sahih Al-Bukhari, translation by Dr. Mahmood Matraji, corrected by F. Amir Zrein Matraji, Vol-VII, Darul-Ishaat, Karachi-Pakistan, page 75

¹³⁶ 3264 to 3265, Kitab al-Nikah, Sunan Nisai, translation by Moulana Fazal Ahmed, Darul-Ishaat, Karachi-Pakistan, pages 320-323.

¹³⁷ 2069, Sunan Abu Dawud: Kitab al-Nikah, English translation with explanatory notes by Prof. Ahmad Hasan, Vol.II, S. Muhammad Ashraf, Publishers and Booksellers, Lahore-Pakistan, Page 554.

¹³⁸ 1415, 'Kitab al-Nikah (Book of Marriage – 16), Sahih Muslim, Vol.II.B, rendered into English by Abdul Hamid Siddiqui, Sh. Muhammad Ashraf, Booksellers & Exporters, Lahore-Pakistan, Page 351. 2069, Sunan Abu Dawud: Kitab al-Nikah, English translation with explanatory notes by Prof. Ahmad Hasan, Vol.II, S. Muhammad Ashraf, Publishers and Booksellers, Lahore-Pakistan, Page 554.

¹³⁹ 1417, 'Kitab al-Nikah (Book of Marriage – 16), Sahih Muslim, Vol.II.B, rendered into English by Abdul Hamid Siddiqui, Sh. Muhammad Ashraf, Booksellers & Exporters, Lahore-Pakistan, Page 801

(legal heirs) of the murdered victim, hence the application of the law of inheritance is presumed.

This argument is weak for the simple reason that the Holy Qur'an has not used the word '*waris*' (legal heir) in the context of *Qisas* and *Diyat* law instead the persons authorized in this regard is the wali i.e. the State¹⁴⁰ (which is not the legal heir), family¹⁴¹ (that could but not necessarily be the legal heirs of the victim) and the brother¹⁴² (is a legal heir but not in the presence of the spouse and children of the victim). The concept of *Qisas* and *Diyat* is meant, on one hand, to stop revenge which used to continue in generation after generation and on the other hand to provide succour to the family of the victim.

Secondly, the objective of *Diyat* inter alia is to make good (to some extent) the loss sustained by the immediate dependents of the victim. For instance, a person dies leaving behind parents, brothers, sisters, widow, daughters, sons and even an adopted orphan child. Out of these some are grown up, well settled and living independently, while some are young and totally dependant on the murdered victim and have no source of income at all. In such a situation, the application of the law of inheritance would lead to giving a major share to those who are already well settled and lesser share to daughters who are not married and sons who are still being educated. This certainly does not go along with the true spirit of the concept of justice in Islam.

It can safely be said from the above discussion that instead of applying the law of inheritance blindly, the court must have the authority to assess the needs of the dependants of the murdered victim and distribute the amount of *Diyat* among them according to their needs /circumstances.

¹⁴⁰ Surah Al Nisa (4:75) , The Holy Qur'an, Text, Translation and Commentary' Abdullah Yousuf Ali, , Sh. Muhammad Ashraf Publishers and Booksellers

¹⁴¹ Surah Al Nisa (4:92), 'The Holy Qur'an, Text, Translation and Commentary' Abdullah Yousuf Ali, , Sh. Muhammad Ashraf Publishers and Booksellers

¹⁴² Surah Al Baqra (2:178), The Holy Qur'an, Text, Translation and Commentary' Abdullah Yousuf Ali, , Sh. Muhammad Ashraf Publishers and Booksellers

o. Application of the provisions of *Qisas & Diyat* on Non-Muslims

The Islamic injunctions have not debarred the Non-Muslims from the application of the provisions of *Qisas* and *Diyat* on them. This is evident from the tradition reported by Anas,¹⁴³ which reveals that Prophet Muhammad ﷺ took *Qisas* for the murder of a woman from a Jewish man, who killed her while trying to steal her jewellery.

The provisions of *Qisas* and *Diyat* are a part and parcel of the PPC, which is also a Public Criminal law, applicable to both the Muslims and non-Muslims alike. In the absence of any overriding or specific provision debarring the non-Muslims, the law is applicable to all the citizens just as the Hudood Laws are.

However, the problems arise when these provisions clash with personal laws of the non-Muslim subjects, as no remedy is provided to that effect. As for instance, the application of the law of inheritance for the disbursement of the amount of compensation i.e. *Diyat* under Section 330, and *Arsh/Daman* under Section 337Z, being Muslim personal law is in violation of the constitutional guarantees u/s 227(3) u/s 2 of the *Shariat* Act 1990. This is one of the reasons for the agitation of the non-Muslims against the law of *Qisas* and *Diyat*.

Hence, in view of the Islamic concept of justice, constitutional guarantees and the provisions of *Shariat* Act, the issue inter alia is, the application of the law of inheritance for the distribution of the amount of *Diyat*, must be addressed to and the law be amended accordingly to ensure full justice to both women and non-Muslims.

Conclusion: Once again the above discussion leads us to conclude that the major reason for the miscarriage of justice is the wrong interpretation of divine injunctions. Hence there is a dire need to understand the Islamic injunctions in their true spirit

¹⁴³ 6879 Sahih Al-Bukhari, by Imam Abi Abdullah Muhammad bin Ismail Al Bukhari, translated by Dr. Mahmood Matraji, Darul Ishaat, Karachi-Pakistan, Vol.9, page 39.

resort to 'Ijtehad' in the prevailing conditions and amend the laws in view thereof to ensure justice.

Chapter Three

I. ‘Honour’ Killing: Religious and Socio-Cultural Perspectives

1. Religious Perspective

‘Honour’ Killing takes place all over the world. According to report of the United Nation Human Rights Commission honor killing takes place in Albania, Bangladesh, Brazil, Canada, Denmark, Ecuador, Egypt, Germany, India, Iran, Iraq, Israel, Italy, Jordan, Morocco, Palestine, Sweden, Turkey, Uganda, UK, USA and many other Countries of the World. Unfortunately it is more rampant in Muslim countries, e.g., Yemen, Afghanistan, Turkey, Sudan, etc., particularly in Pakistan, Bangladesh and in certain part of India, as for instance Rajasthan.

The Chief Justice of Pakistan in his speech on 17-9-06 (reported in Daily Dawn dated 18-9-06) defined honor killing as “killing of a female, and some times her love-interests and other associates, for supposed sexual or marital offences, typically by her own relatives with the justification being that the ‘offence’ has brought dishonor to the family.”

The analysis of Islamic injunctions and the consultation with the religious scholars all over Pakistan as well as abroad revealed that crime of ‘honour killing,” has no nexus with religion whatsoever. It is committed with an evangelistic spirit and is a reflection of male chauvinism and gender bias at its worst.

The crime of ‘honour’ killing dates back to pre-Islamic Arab society. One of the major incidents¹⁴⁴ in this context is that once during war the victor tribe took away womenfolk of the vanquished tribe. After the end of war, under a peace treaty the women were given a choice to return to their respective tribes. One of the young girls refused to go back as she got married to a young man of the victor tribe. This was taken as a disgrace by the former tribe and it resulted in the development of the practice of burying the newly born girls alive to avoid ‘dishonour’ in future. Since the promulgation of Islam is meant inter alia to curb all such social evils, a strong note of warning was given to the people in *Surah Al Takwir* (81:6-9). It reads:

“When the oceans boil over with a swell;

وَإِذَا الْبِحَارُ سُجِّرَتْ ۝

When the souls are sorted out (being joined, like with like);

وَإِذَا النُّفُوسُ سُئِلَتْ ۝

When the female (infant), buried alive, is questioned.

وَإِذَا الْمَوْءُودَةُ سُئِلَتْ ۝

For what crime she was killed”

بِأَيِّ ذَنْبٍ قُتِلَتْ ۝

In the above revelation, the Day of Judgment is portrayed in graphic detail when inter alia those innocent girls, who were buried alive or killed, would be asked to speak out against those who wronged them and the latter would have to account for that.

¹⁴⁴ Explained by Pir Muhammad Karam Shah (Al-Azhari) in his famous translation of Holy Qur’an) “Tafseer Zial-ul-Qur’an”, Volume V, quoted in the judgement of Muhammad Siddique vs. The State, PLD 2002 Lahore 444

Thus the killing in the name of so-called ‘*ghairat*’ is strictly prohibited in Islam. But that of course does not mean that illicit relationships are allowed to go unchecked. In fact, Allah *Rab-ul-Izzat* commands sex purity for men and women, at all times – before marriage, during marriage and after the dissolution of marriage.

Abdullah Bin Masud رضي narrated that the Prophet ﷺ said: “There is none having a greater sense of zeal than Allah, and for that he has forbidden the doing of evil actions (illegal sexual intercourse etc.). There is none who likes to be praised more than Allah does.”¹⁴⁵

2. Islamic Punishments for Crimes Relating to Sex

Punishments are an integral part of any Justice system and so also in Islamic system. In Islam those who are guilty of illicit practices, are not only shut out of the circle of chaste men and women but severe punishments have been prescribed for them. It is to be noted that the Quran has prescribed clearly the procedure and the requirements for proof of such offences and punishments, so that no innocent person be punished by mistake. For example specific Quranic injunctions in Sura Nur (24:2) relating to the following crimes:

i. Offence of Adultery or Fornication.

الزَّانِيَةُ وَالزَّانِي
فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ
وَلَا تَأْخُذْ كُفُّ بِهِمَا رَأْفَةٌ
فِي دِينِ اللَّهِ إِن كُنتُمْ
تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ
عَذَابُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ ۝

¹⁴⁵ 5220, Sahih Bukhari, Chapter 108, ‘the zeal’, translated by Dr. Mahmood Matraji, corrected and revised by F. Amira Zrein Matraji, Darul Ishaat, Karachi-Pakistan, Vol. VII, page 119.

The woman and the man guilty of adultery or fornication
 Flog each of them with a hundred stripes:
 Let not compassion move you in their case, in a matter
 Prescribed by Allah, if ye believe in Allah and the Last Day:
 And let a party of the Believers witness their punishment.¹⁴⁶

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً
 وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ

Let no man guilty of adultery or fornication marry
 Any but a woman similarly guilty, or an Unbeliever:
 Nor let any but such a man or an Unbeliever
 Marry such a woman: To the Believers such a thing is forbidden.¹⁴⁷

ii Lewdness

If any of your women are guilty of lewdness,
 Take the evidence of four (Reliable) witnesses from
 Amongst you against them, Or Allah ordain for them
 Some (other) way.^{148 149}

¹⁴⁶ Surah Al Nur (24:2), 'The Holy Qur'an, Text, Translation and Commentary' Abdullah Yousuf Ali, , Sh. Muhammad Ashraf Publishers and Booksellers

¹⁴⁷ Surah Al Nur (24:3), 'The Holy Qur'an, Text, Translation and Commentary' Abdullah Yousuf Ali, , Sh. Muhammad Ashraf Publishers and Booksellers

¹⁴⁸ Surah Al Nisa (4:15), 'The Holy Qur'an, Text, Translation and Commentary' Abdullah Yousuf Ali, , Sh. Muhammad Ashraf Publishers and Booksellers

¹⁴⁹ Note: According to Abul Aala Moududi this verse relates to the punishment for women guilty of adultery (zina): Tafheem-ul-Qur'an, Tarjuman-ul-Qur'an, Lahore, Vol. I, page 331.

وَالَّتِي يَأْتِيَنِ الْفَاحِشَةَ مِنْ نِسَائِكُمْ
فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ
فَإِنْ شَهِدُوا فَامْسِكُوهُنَّ فِي الْبُيُوتِ
حَتَّى يَتَوَفَّيَهُنَّ الْمَوْتُ
أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا ۝

If two men among you are guilty of lewdness,
Punish them both. If they repent and amend,
Leave them alone; for Allah is Oft-relenting, most merciful.¹⁵⁰

وَالَّذِينَ يَأْتِيْنَهَا مِنْكُمْ فَادُّوهُمَا
فَإِنْ تَابَا وَأَصْلَحَا
فَاعْرِضْ عَنْهُمَا
إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا ۝

iii. Charge of adultery against a spouse

The allegation of adultery on a spouse, where no witnesses are available entails an entirely different procedure described in *Sura Nur as Lian*. It is ordained that:

And for those who launch a charge against their spouses,
And have (in support) no evidence but their own,
Their solitary evidence (Can be received) if they
Bear witness four times (with an oath) by Allah
That they are solemnly telling the truth;¹⁵¹

¹⁵⁰ Surah Al Nisa (4:15)

¹⁵¹ Surah Al Nur (24:6), 'The Holy Quran', Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ
وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ
فَشَهَادَةُ أَحَدِهِمْ
أَرْبَعُ شَهَدَاتٍ بِاللَّهِ
إِنَّهُ لَمِنَ الصَّادِقِينَ ۝

And fifth (oath) (should be) that they solemnly

Invoke the curse of Allah on themselves if they tell a lie.¹⁵²

وَالْخَامِسَةُ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ
إِنْ كَانَ مِنَ الْكَذِبِينَ ۝

But it would avert the punishment from the wife,

If she bears witness four times (with an oath)

By Allah, that (her husband) is telling a lie;¹⁵³

وَيَدْرُؤُا عَنْهَا الْعَذَابَ
أَنْ تَشْهَدَ أَرْبَعَ شَهَدَاتٍ بِاللَّهِ
إِنَّهُ لَمِنَ الْكَذِبِينَ ۝

And the fifth (oath) should be that she solemnly

Invokes the wrath of Allah on herself if (her accuser)

Is telling the truth.¹⁵⁴

وَالْخَامِسَةُ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا
إِنْ كَانَ مِنَ الصَّادِقِينَ ۝

¹⁵² Surah Al Nur (24:7), 'The Holy Quran', Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers

¹⁵³ Surah Al Nur (24:8), 'The Holy Quran', Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers

¹⁵⁴ Surah Al Nur (24:9), 'The Holy Quran', Text, Translation And commentary by Abdullah Yousaf Ali, Sh. Mohammad Ashraf Publishers & book sellers

Section 14 of Offences of Qazaf (Enforcement of Hadd) Ordinance 1979 prescribes the procedure of Lian.

Accordingly if a husband, before a competent court solemnly swears four times to the fact, and in addition invokes a curse on himself if he lies is prima facie evidence against the wife. But if the wife swears similarly four times and invokes a curse on herself, she will be acquitted of the guilt. But if she refuses to take such an oath, the charge is considered proven and the punishment of stoning to death, if she is a Muhsan, or hundred (100) lashes as the case may be will follow. In case both take the oath, the Court will dissolve the marriage.

The above procedure clearly establishes that even in extreme circumstances, the accusing partner is not allowed to take the life of the other in the name of ‘honour’ or ‘*ghairat*.’

Further, it proves the equality of a man and woman in the Islamic justice system. the crime of ‘honour’ killing is further ruled out inter alia on the ground of the tradition (*Hadith*) attributed to Sa’ad bin ‘Ubada. ¹⁵⁵ He stated in the presence of the prophet that: “If I saw a man with my wife, I would strike him with a sharp edge of the sword. The Prophet ﷺ said (to his companions) “Are you astonished at Sa’ad’s sense of honour? By Allah I have a greater sense of jealousy than he has and Allah has a still more greater sense of zeal than I have.” ¹⁵⁵

(The above Hadith indicates that in no condition a person is allowed to take the life of another person)

¹⁵⁵ 5220 Sahih Bukhari, Translated into English by Mahmood Matraji, corrected and revised by F. Amira Zrein Matraji, Chapter 108: ‘the zeal’, Vol VII, Darul Ishaat, Karachi-Pakistan, page 119.

وَقَالَ وَرَأْدُ عَنِ الْمُغِيرَةِ قَالَ سَعْدُ بْنُ عُبَادَةَ لَوْ رَأَيْتُ رَجُلًا مَعَ امْرَأَتِي لَضَرَبْتُهِ بِالسَّيْفِ
غَيْرَ مُصْنِعٍ فَقَالَ النَّبِيُّ ﷺ أَتَعْجَبُونَ مِنْ غَيْرَةِ سَعْدٍ؟ لَأَنَا أَغَيْرُ مِنْهُ وَاللَّهِ أَغَيْرُ مِنِّي.
۵۲۲۰. حَدَّثَنَا عُمَرُ بْنُ حَفْصٍ حَدَّثَنَا أَبِي حَدَّثَنَا الْأَعْمَشُ عَنْ شَقِيقٍ عَنْ
عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنِ النَّبِيِّ ﷺ قَالَ: وَمَا مِنْ أَحَدٍ أَغَيْرُ مِنْ شَالِلِهِ، مِنْ أَجْلِ تِلْكَ
حَرَمِ الْفَوَاحِشِ، وَمَا أَحَدٌ أَحَبُّ إِلَيْهِ الْمَدْحُ مِنَ اللَّهِ.

Some other traditions reflecting clear prohibition of killing in the name of ‘ghairat’ have been reported by Sahl b. Sa’d al-Sa’idi¹⁵⁶ and Nafi¹⁵⁷ (on the authority of Ibne Umar),¹⁵⁷ Sa’id b. Jubair¹⁵⁸ and Abdullah¹⁵⁹.

The Council of Islamic Ideology realizing the heinous crime of honour killing rampant in the society formed a Working Group to submit its recommendations on the crime of honour or ‘ghairat’ in its 138th Session. The said Working Group while condemning the ‘honour killing’ gave the following remarks:¹⁶⁰

ورکنگ گروپ اپنے اس اجلاس میں ارکانِ کونسل مولانا حافظ محمد حسن جان (ملحق نمبر ۱) اور ڈاکٹر محمد سرفراز نعیمی (ملحق نمبر ۲) کی تحریری آراء کا خلاصہ سننے، اس موضوع سے متعلق کونسل کے ۱۳۸ ویں اجلاس میں پیش کئے گئے پیپرز، بعض جرائد و مجلات میں طبع ہونے والے مضامین اور جرم قتل سے متعلق مجموعہ تعزیرات پاکستان کی دفعات پر غور کرنے کے بعد اس نتیجہ پر پہنچا کہ:

¹⁵⁶ 1492 (Book of invoking curse (19)), Sahih Muslim, Vol.II.B, translated into English by Abdul Hamid Siddiqui, Sh. Muhammad Ashraf, Booksellers & Exporters, Lahore-Pakistan, Page 426

¹⁵⁷ 1494 (Book of invoking curse (19)), Sahih Muslim, Vol.II.B, translated into English by Abdul Hamid Siddiqui, Sh. Muhammad Ashraf, Booksellers & Exporters, Lahore-Pakistan, Page 428

¹⁵⁸ 1493 (Book of invoking curse (19)), Sahih Muslim, Vol.II.B, translated into English by Abdul Hamid Siddiqui, Sh. Muhammad Ashraf, Booksellers & Exporters, Lahore-Pakistan, Page 851

¹⁵⁹ 1495 (Book of invoking curse (19)), Sahih Muslim, Vol.II.B, translated into English by Abdul Hamid Siddiqui, Sh. Muhammad Ashraf, Booksellers & Exporters, Lahore-Pakistan, Page 855

¹⁶⁰ Working group consisted of Maulana Hafiz Mohammad Hasan Jan and Dr. Mohammad Sarfaraz Naeemi

”بدکاری و بے حیائی اور فواحش و منکرات کا ارتکاب اگرچہ کبیرہ گناہوں میں شمار ہوتا ہے اور یہی وجہ ہے کہ شریعت میں اس کی سزا بھی بے حد سنگین مقرر کی گئی ہے، مگر دین اسلام میں کسی شخص کو اس بات کی اجازت نہیں کہ وہ اپنے کسی عزیز یا عزیزہ کو کسی اخلاقی جرم کا ارتکاب کرتے ہوئے دیکھے تو قانون کو اپنے ہاتھ میں لیتے ہوئے اسے خود ہی سزا دینا شروع کر دے۔ اس کیفیت میں مشتعل ہو جانا اور غیرت کا مظاہرہ کرنا ایک طبعی بات ہے مگر فواحش و منکرات کو حرام قرار دینے کے باوجود اسلام اس بات کی اجازت نہیں دیتا کہ کوئی شخص ماورائے عدالت از خود بد اخلاقی کے مجرم کو سزا دے لہذا اس مجرم کو بھی عدالت ہی میں پیش کیا جائے گا۔ کمیٹی کی رائے میں اس وقت ملک میں اس مسئلہ سے متعلق رائج قانون شریعت کے مطابق ہے، اس کے بارے میں کسی مزید قانون سازی یا ترمیم کی ضرورت نہیں ہے۔“

In view of the above mentioned Islamic injunctions it is crystal clear that there is no concept of ‘honour killing’ in Islam which is in fact a pre-Islamic tradition that has been prohibited. In view of the religious scholars ‘honour’ killing, falls within the ambit of *‘fasad-fil-ard.’*

Conclusion: Honour killing is an offence and the violation of human rights in general and women’s rights in particular. It is not only a sin but also a crime, as “Islam considers crime an act of injustice towards society, a sin against oneself and a transgression against Allah. Punishment is not atonement nor does it erase the sin. A sin is only forgiven through repentance. However, a crime is an act of inflicting harm upon society that cannot be forgiven by repentance alone.”¹⁶¹ An appropriate legislative framework is therefore required to punish the offender and also to protect the society specially women from recurrence of the crime.

¹⁶¹ Mufti-Islam Online Fatwa Committee (26-May-2001), Source: <http://www.islamic-paths.org>

3. Socio-Cultural Perspective

‘Honour’ killing is a global phenomenon and Pakistan is no exception. In Pakistan it is termed as *karo kari* in Sindh, *Kala Kali* in Punjab and *Siyah kari* in Baluchistan.

The analysis of ‘honour’ killing cases in Pakistan indicates the following two major socio-cultural factors in the background, which are responsible for most of these cases:

- a. A certain mental outlook and a creed which seeks to deprive women of their inherent and inalienable rights, which are not only vested in them by Islam but also guaranteed by the constitution of Pakistan.
- b. The conception of honour has made women’s right to life subject to their obeying social norms and traditions.¹⁶²

The offenders of ‘honour’ killing are mostly men who are husbands, fathers, sons, or brothers of the woman. In rare cases, however, due to social and emotional pressures women are forced to commit ‘honour’ killing.

The analysis of the varying modes for killing ‘karis’¹⁶³, reveals the brutal nature of the crime. For instance in Sindh, a *kari* and a *karo*¹⁶⁴ are hacked to pieces

¹⁶² Amnesty International, ‘Pakistan – Honour Killings of Girls and Women’, Source: Internet

¹⁶³ Karis: plural of kari meaning black woman i.e. a woman who has been alleged of having illegitimate relationship.

¹⁶⁴ Karo: A black man i.e. a man who has been alleged of having illegitimate relationship.

with axe and hatchets. In Punjab, the killings are usually by shooting and are often based on individual decisions and carried out in private. In some cases throughout the country, *jirgas* (tribal councils) and panchayat decide that the woman should be killed and send men to execute their order.

One of the worst part of socio-cultural aspect of 'honour' killing is that a *kari* woman remains dishonoured even after death. Their dead bodies are thrown in rivers or buried in special hidden *kari* graveyards without giving them a bath before burial, and nobody mourns for them or honours their memory by performing the relevant rites. *Karos*, who are men, by contrast are reportedly buried in the communal graveyard.

In the tribal society of Pakistan, a woman is equated with money and is treated like a commodity, who could be killed even on the slightest suspicion of her having low morals, or may also be freely traded for compounding crimes or given away as part of a *karo-kari* settlement.

Few tribes in upper Sindh like the Mehars, do not physically kill a woman accused of being a *kari*. Instead they banish them, marrying them to far away tribes. Their original community must never see a banished woman again and she can never come to visit her family. All the above discussion indicates extremely harsh punishments for the crimes which the victims (women) has rarely committed.

Honour killings are not confined to remote rural areas only but they have been reported, though less frequently, in urban settings, sometimes among the urban elite also. In many cases the targets of honor killing escape to urban cities to hide, and seek protection from different quarters.

Following are some of the grounds for honour killing in Pakistan:

i. Denial of women's right to Marriage, as against the will of the family

It is the settled proposition of law that in Islam a *sui juris* woman can contract *Nikah* of her own free will. The consent of the parties, man and woman both, is basic primary requirement of a valid marriage under the law. The supreme court has already decided this issue that an adult woman can marry of her own free will and consent of wali is not mandatory. A nikah performed under coercion is not considered legal. A woman is also entitled to exercise her option after attaining puberty and can refuse to accept the nikkah performed by the wali.

Despite clear injunctions, the women in our patriarchal society cannot exercise their right to choose their life partner, against the will of the *wali*/family.

A woman's expression of a desire to choose a spouse and marry of her own choice are often seen as major acts of defiance in the Pakistani society and a challenge to the honour of the family.

There are numerous case studies in which, the women exercising their rights to marry have been murdered or put behind the bars under *Hudood* Ordinances by the family members of the girl.

Some of the reported cases are discussed below:

Salma Bibi's case:¹⁶⁵ This is the case of a brutal triple murder by a father (Muhammad Siddique) of his daughter, (Salma Bibi) who against the wishes of her parents, married a man of her own choice (Muhammad Aslam). She, her husband and their infant daughter (Saba 6-7 months old), were murdered in cold blood and is one of the shocking example in this context.

Shazia Khashkheli's case: A barbaric murder of Shazia Khashkheli and her husband, Mohammad Hassan Solangi on October 8, 2003, in Sanghar, after the couple was tortured for several hours.

Afsheen's case: She was also murdered on account of '*ghairat*'.¹⁶⁶ She was reportedly buried without rites in a shallow grave.

According to HRCP, her murder had not been reported to the police. HRCP asked the Multan Police to conduct an inquiry into the suspected honour killing after family members of victim failed to file an FIR. Later, the president ordered the inquiry into the case. The autopsy report confirmed murder after a prolonged torture. Her father, Mussarat Sahu, was arrested for the crime soon afterwards, and confessed the murder. At least five other relatives involved in the murder were also arrested by the end of year 2003.¹⁶⁷

Sher Bano's case:¹⁶⁸ She had left her home with a man she wanted to marry but was arrested on charges of *zina*. On 6 August 1997, when she

¹⁶⁵ Muhammad Siddique v. The State, PLD 2002 Lah. 444

¹⁶⁶ State of Human Rights in 2003, Human Rights Commission of Pakistan, page 249-250

¹⁶⁷ State of Human Rights in 2003, Human Rights Commission of Pakistan, page 249-250

¹⁶⁸ Amnesty International, 'Pakistan – Honour Killings of Girls and Women', Source: Internet

emerged under police guard from the court room after submitting her bail application, her brother shot her dead.

Shaista Almani's case: This is a case of the marriage wherein Shaista Almani and Balkhsher Mahar married outside their clans of their own free will. Though Shaista's own parents had apparently given consent but she was declared 'kari' by a tribal council headed by her brother-in-law, Mohammad Afzal. The Mahar tribe to which Balkhsher belonged also opposed the marriage to a woman who was not a member of their tribe.

As per report of HRCP,¹⁶⁹ in September, Shaista alleged in a complaint that her mother, father and younger brothers and sisters were being held captive in a bid to force her to return to her village. In Karachi, while the couple took shelter with Abdul Sattar Edhi, police after investigating the case, suggested that they appear before a court and stage a court marriage, after which they were released to live anywhere they wanted. However, the couple could not get any safe shelter. In October 2003, she was handed over to her parents through Almani tribal chiefs. The court was informed on 28th October that Shaista had already been handed back to her parents. Her husband, Balkhsher was reportedly kept at the house of Ali Gohar Mahar, chief of the Mahar tribe. In late November 2003, Balkhsher, apparently acting under intense tribal pressure, announced that he had divorced his wife, because the couple faced a threat to life in case the marriage was kept intact. However their marriage survived but they had to leave the country to save their lives.

¹⁶⁹ State of Human Rights in 2003, Human Rights Commission of Pakistan

Dr. Mustafa Solangi (aged 43) and Dr. Amnat Solangi (aged 42), were a mature and a highly qualified couple who married out of their own choice, but with consent of Dr. Amnat's mother who attended the nikah ceremony. The couple took shelter in various cities of the country and contested cases in the high court of Sindh.

The problem arose after the marriage was announced and Dr. Amnat's brother realized that he will be deprived of a considerable income that his sister had been bringing home from her practice as a gynaecologist. He started harassing the couple and lodged FIR against Dr. Solangi, which was later declared to be false by Naushero Feroze police. The couple meanwhile remained under threat, and has claimed to have, on at least one occasion, narrowly escaped from being murdered in the premises of high court itself.¹⁷⁰ They were unable to attend to their duties in government hospital for quite a long time. Recently, through the persistent endeavours from many quarters, including the National Commission on the Status of Women (NCSW), the federal Government had agreed to take them on deputation to Islamabad.

These cases show that the decisions taken by women, who exercise their right given to them by the law and religion, are not acceptable to many people due to so-called family honour, though the motives behind these actions were mostly economic and other vested interest.

ii. *Watta Satta* (Exchange Marriage)

This is another form of forced marriage with least consideration to the women's right to give consent to marriage. It involves exchange of siblings, putting an additional burden on women to abide by the marriage arrangements made by the family. An example of the horrible consequence of such a marriage is the murder of Shaheen, who was

¹⁷⁰ State of Human Rights in 2003, Human Rights Commission of Pakistan, page 251

allegedly set on fire by her husband Anwar in Gujjarpura (Punjab) in December 1998. Due to constant marital disputes Anwar, wanted to send his wife Shaheen back to her parents, Shaheen's brother, married to Anwar's sister, refused to send his wife home. On refusal Anwar found no other way to remove his humiliation than to kill his wife¹⁷¹.

iii. Denial of women's right to divorce

Islam has given women not only the right to marry but also to seek divorce i.e. she is not forced to carry on with her marital life if she dislikes the husband or there is incompatibility of temperaments or if she was forced to marry. It is stated in Sahih Al Bukhari¹⁷² that a woman appeared before the Holy Prophet Muhammad ﷺ and complained that her marriage (nikah) had been performed against her consent. The holy Prophet ﷺ annulled the said marriage.

The ratio laid down in the case of Mohyuddin v. Khadija Bibi (41 Bombay LR 1020) is based on this practice of the Holy Prophet. ﷺ

Syed Ameer Ali,¹⁷³ a celebrated Islamic jurist in his book "The Spirit of Islam" writes that even a king cannot give his daughter away in marriage without her consent.

Despite this Islamic practice, the act of women seeking divorce is still unacceptable and is considered as most abominable act. In certain circles it calls for punitive action to restore male honour within the traditional setting, as is evident from the following cases:

¹⁷¹ *Dawn*, 16 December 1998.

¹⁷² 5138, Sahih Al Bukhari, Arabic-English translation by Dr. Mahmood Matraji, corrected and revised by F. Amira Zrein Matraji, Vol. VII, Darul Ishaat, Karachi-Pakistan, page 75

¹⁷³ Quoted in the judgment of the case: Humaira Mehmood v. State, PLD 1999 Lahore 494

Samia Sarwar's case:¹⁷⁴ On 6 April 1999, a 29-year-old woman namely Samia, a mother of two young sons, was shot dead in her lawyer's office in Lahore, on the instructions of her mother who accompanied the killer because Samia was seeking divorce from her husband.

It is unfortunate that (as reported by newspapers in the NWFP) the public overwhelmingly supported the killing, and considered it being in accordance with the traditions. The case was compounded and murderers went scot free.

Noor Khatoon's case:¹⁷⁵ She was accused of being '*kari*' on her filing the case for the dissolution of her marriage after being fed up with the immense violence by her husband and other family members. The *jirga* also declared her '*kari*' and ordered for her killing. She managed to save herself by writing letters to several sindhi newspapers and to the Khairpur district nazim and moving the court in this regard.

iv. Denial of Women's Right to Life on Being Raped

It is an accepted fact that a woman victim of rape needs justice and moral support to help her in recovering from trauma and the irreparable loss sustained by her. But unfortunately, in our society such women are harassed and haunted by the society and instead of support she has to run to save her life. Due to *Hudood* laws the woman instead of being treated as a victim is regarded as an offender. This happens as under Hudood law the proof for the offence of zina and zina bil jabar is the same i.e. to bring four adult muslim male witnesses. If convicted the

¹⁷⁴ Amnesty International, 'Pakistan – Honour Killings of Girls and Women', Source: Internet

¹⁷⁵ State of Human Rights in 2003, Human Rights Commission of Pakistan, page 241

punishment can be stoning to death, if she is a muhsan or 100 strips if she is unmarried.

Some of the known cases are discussed below:

Lal Jamila Mandokhel's case:¹⁷⁶ She was 16-year-old mentally retarded girl reportedly raped several times by a junior clerk of the local government department of agriculture in a hotel in Parachinar, NWFP. The girl's uncle filed a complaint about the incident to the police who took the accused into protective custody but handed over the girl to her tribe, the Mazuzai in the Kurram Agency. A *jirga* of Pathan tribesmen decided that she had brought shame to her tribe and that the honour could only be restored by her death. She was shot dead in front of a tribal gathering.

Arbab Khatoon's case:¹⁷⁷ She was raped by three men in a village in Jacobabad district (Sindh) and reportedly lodged a complaint with the police. According to local residents, she was killed by her relatives, for bringing dishonour to the family by going to the police.

3.1.2.4. Honour Killings in Disguise

According to Root Works, an NGO working for victims of honour killing and other organizations,¹⁷⁸ conducting research on 'honour' killings, this offence is often committed with some hidden motives also. Their case studies have revealed the following causes of 'honour' killing:

¹⁷⁶ Amnesty International, 'Pakistan – Honour Killings of Girls and Women', Source: Internet

¹⁷⁷ Nafisa Shah: A story in black: Karo-kari killings in upper Sindh, Reuter Foundation Paper 100, Oxford, 1998, p. 56. Source, quoted by Amnesty International in report: 'Pakistan – Honour Killings of Girls and Women', Source: Internet.

¹⁷⁸ NCSW Consultation meeting on 'Qisas and Diyat', with the Parliamentarians, Public Sector and Civil Society Organizations, held all over Pakistan.

- i) If a male member of the family kills his male enemy, in order to camouflage his offence and to save himself from severe punishment, he would kill a woman of his own family and accuse both being seen in compromising position and for having illicit relationship with each other;
- ii) Killing his former wife so that she is not able to contract her second marriage, even after he has divorced her (verbally but not in writing as per laws);
- iii) Keeping the family property intact in case a woman intends to marry outside the family;
- iv) Extracting money from the accused person for re-marrying when there are objections from the existing wife or similar circumstances (a person alleged to have illegitimate relationship with a woman of his family) or to obtain a woman in compensation from him;
- v) For remarrying when the first wife objects to or similar circumstances.

Amnesty International has reported some of the following cases reflecting other grounds of 'honour' killing:¹⁷⁹

- In November 1997, one Mussarrat Bibi, a mother of three children, pregnant and married for 11 years, was beaten to death by villagers in Chehel Khurd near Qila Deedar Singh in Sheikupura district after rumours of her immoral behaviour. Inquiries revealed that the real reason for her death was that she had refused to work for the local landlords without payment.
- A case was reported from Ghotki (Sindh), in which a man who reportedly vouched for his wife's innocence when she was attacked by

¹⁷⁹ Amnesty International in report: 'Pakistan – Honour Killings of Girls and Women', Source: Internet.

his brother on the allegation of 'illicit' relationship. The husband took her to Karachi for treatment. But when he was informed by the doctors that she would be permanently paralysed from the waist down, he changed his mind, declared her a *kari* and took a woman in compensation from the supposed *karo*'s family.

II. Domestic violence

Domestic violence is frequently intended to punish a woman for any perceived insubordination equating such an act to be effecting the male honor.

Some of the following highlighted cases are the reflection of the brutal attitude of men towards women:

Sabira Khan's case:¹⁸⁰ She was married at the age of 16 years to a man of more than twice her age. Shortly after her wedding in 1991, she was told by her husband that she must never see her family again. When in December 1993, she tried to break this rule, her husband and mother-in-law poured kerosene oil and set her on fire. She was three months pregnant at that time. Despite 60 per cent burns she survived though badly scarred. She has fought since then to bring charges against the perpetrators without any success. The magistrate in Jhelum upheld her husband's argument that Sabira was insane and had set herself on fire. An appeal is pending in the Rawalpindi high court bench.

Zenaib's case:¹⁸¹ Qari Sharif, an Imam of mosque tortured his wife named 'Zenaib', by giving electric shock to her private parts of the body. The anti-terrorist court awarded punishment of consecutive 10 years imprisonment on 3 counts. While, Lahore

¹⁸⁰ Ibid

¹⁸¹ Council of Islamic Ideology, Islamabad, 'Annual Report 2001-2002' 1422-23 H., page 77

high court, Rawalpindi bench on appeal changed it to concurrent 10 years on 1 count only. Qureshi medical store paid Rs.63,000/=, by way of compensation and got the convict released only after 7 years of imprisonment. Justice [®] Amjad Ali briefed the Council of Islamic Ideology that the aforesaid judgement of high court is erroneous as the cases relating to *Hadood* laws are not compoundable. Even jail authorities do not have the jurisdiction to reduce or commute the sentence.

Naheed Riaz's case: ¹⁸² In this case, Mst. Naheed Riaz got married to Khan Fayyaz Khan who had been very abusive towards her both mentally and physically. At one instance, he broke her arm, at another he threw acid on her. She worked at various places to support herself and her daughter (from her former husband, who had passed away). Being totally disgusted with her marital life, she managed to escape from her home by jumping from the roof of her house to an adjoining house and finally ended up at the house of her friend (a young man who considered her as his elder sister). The victim apprehends that she will be killed by her husband.

The reported cases of domestic violence are only the tip of the iceberg because a lot of them go unreported due to social pressures, family ties and respect for family honour.

Conclusion: Despite clear Islamic injunctions, declaring status and rights of women equal to that of men, women are often denied of their basic human rights in our patriarchal set-up on the ground of culture and traditions. These practices are required to be reformed in the light of the Islamic justice system and constitutional guarantees.

¹⁸² Information from AGHS Legal Aid Cell to the National Commission on the Status of Women (NCSW)

I. Impact of lacunae in the Legislature Framework and Socio-Cultural Traditions

The lacunae in the subject law resulting in anomalies are facilitated by the socio-cultural traditions that we have already discussed in detail, which are adversely affecting the status and rights of women in Pakistan.

The ‘honour’ killing is an extreme form of domestic violence, which is rampant in Pakistan. This is because of the patriarchal system prevalent here and the law which allows unconditional right to waive *Qisas* or compound the offence at any stage by the surviving victims or by any one of the legal heirs of the murdered victim. This is evident from the statistics reflected in appendix ‘B.’

Despite being an intentional murder, in the absence of any specific provision to that effect it is neither treated as a pre-meditated murder nor a ‘pure and simple’ murder, as held in the case of Ghulam Farid’s case.¹⁸³

The judgements of courts clearly indicate that an element of ‘*ghairat*’ (honour), is recognized to be a valid ground for killing a person, as for instance in Muhammad Rafique’s case.¹⁸⁴ In Sardar Muhammad’s case,¹⁸⁵ judiciary gave the verdict of the justifiability of killing a person in the name of ‘*ghairat*’ straight away by calling it ‘no offence.’

¹⁸³ Ghulam Farid v. The State, 1997 P.Cr.L.J. 1411 [Lahore]

¹⁸⁴ Muhammad Rafique vs. The State, PLD 1993 Lahore 848

¹⁸⁵ Sardar Muhammad vs. The State, NLR 1999 Criminal 11

The punishment provided for intentional murder (*qatle-e-amd*) under section 302 is *Qisas*¹⁸⁶. But in those cases where *Qisas* is not applicable then under *tazir* death penalty, or life imprisonment¹⁸⁷ or imprisonment of either description for a term which may extend to 25 years is provided. But it has been observed that due to mind set and prevailing socio economic conditions the offenders of ‘honour’ killing are acquitted in majority of the cases. This is emphatically evident from the following statistics of 1994:¹⁸⁸

Province	No. of cases	No. of cases Disposed off	Convictions	Acquittal
NWFP	239	141	10(7%)	131(92.9%)
Baluchistan	57	39	17(33.3%)	22(43.13%)
Sindh	910	293	25(8.53%)	268(91.4%)
Punjab	1707	1142	320(28%)	822(71.97%)

According to the statistics compiled by Human Rights Commission of Pakistan (HRCP) in 2003¹⁸⁹ 172 cases of honour killings were reported in Punjab out of whom 16 victims were minors, 69 were single and 61 were married women. Thirteen (13) women were killed along with men. Although the FIR was registered for 90 such cases but the accused were held only in 23 of them. In the same year, 152 persons, including 97 women were reported to have lost their lives as a result of ‘honour’ killings in just the southern Punjab.

¹⁸⁶ Section 302 (a), PPC

¹⁸⁷ Section 302 (b), PPC

¹⁸⁸ Statistics provided by the Police Departments in all the Provinces of Pakistan

¹⁸⁹ State of Human Rights in 2003, Human Rights Commission of Pakistan, page 240, Lahore – 54600.

Similarly in Sindh, 398 'honour' killing cases were reported by HRCP at the end of the year 2003. According to their report "in April 2003, the police was directed by the federal government to register cases committed in the name of honour and provide immediate justice. However, despite these efforts, it was believed that at least 70 per cent of persons committing honour killings across the country escape without being penalized".

In addition, the rate of domestic violence in the form of beating, murder and other forms as burning, rape, gang rape, chopping off of body parts like nose, ear, etc., is also on the rise. This is also evident from the statistics obtained from the police departments of all the provinces of Pakistan attached as annexure 'C.'

It is also reported by HRCP¹⁹⁰ that a sample survey showed 82 per cent of women in rural Punjab feared violence from their husbands' due to displeasure over minor matters; while in the most developed urban areas, 52 per cent wives admitted being beaten by their husbands.

According to the judges (at all levels) women are hardly compensated for the injury / hurt sustained by them particularly in domestic violence. Most often the women victims are not aware of their rights and waive their right to *Qisas* or even compensation.

Ms. Shahnaz Bokhari heading the Progressive Women Association - Islamabad stated that her organization monitored 1,600 cases of domestic violence in which women were burned in their homes in Rawalpindi and Islamabad since March 1994.

¹⁹⁰ State of Human Rights in 1998, Human Rights Commission of Pakistan

Most of the cases relating to the offence punishable with *Qisas* are disposed off when apparently the witness(s) turn hostile. In reality such cases are settled outside the Court by adopting illegal means of settling disputes by setting up *panchayat/jirga* or by coercion paying small amounts as *diyat*. Consequently, the rate of such settlements is very high. The cases under '*Qisas and Diyat Law*,' being disposed off by the district and session court of Lahore (Punjab) reveals the following shocking statistics of 1993 in this context:

• Total number of cases disposed off in one year	15
• Cases in which <i>Qisas</i> inflicted	01
• Death Penalty	01
• Compounding / compromise on record.....	00
• Cases of hostile witnesses	13

The overall situation as discussed above, reflects the vulnerability of women both legally and socially. Since the women constitute 48 per cent of the population of Pakistan and their vulnerability also causes adverse effects on the next generations and the society as a whole, therefore, violence against them should be stopped at all costs, and full legal support should be provided for their safety.

Policy Recommendations

The proposed amendments in the P.P.C. Cr.P.C and other relevant laws are divided into the following parts:

- I. Incorporation of new provisions by Amendments
- II. Repeal of certain prevalent provisions
- III. Amendments in certain prevalent provisions
- IV. General

Details

I. Incorporation of new provisions

1. Section 299 P.P.C.

The definition of the term ‘fisad-fil-ard’ (فِسَادُ فِي الْأَرْضِ) (mischief on the earth) including the offences like ‘honour’ killing, incest, rape and gang-rape be added.

2. Section 309, 310, 313(1) and 338E P.P.C., and Section 345 Cr.P.C.

The offences included within the definition of the term ‘fisad-fil-ard’, should be made an exception to the provisions of compounding under Chapter XVI, P.P.C.

3. Compounding of an offence

The compounding of any offence under the provisions of Chapter XVI, P.P.C., shall be allowed subject to the completion of the following procedure:

- a. All evidence is brought on record;
 - b. Crime is proved either by confession or by evidence;
 - c. Accused to be convicted by the court;
 - d. The convict submits his/her written apology to the legal heirs of the victim through the court; and
 - e. The decision to compound the offence by the legal heirs of the victim must be unanimous. Where there is a difference, majority opinion must prevail and in case of a tie, state in its capacity as *wali*, must decide the case.
4. If the offender had earlier been a convict, as per proposed provision of clause I (3)(c) herein above, then he shall not be entitled to be pardoned or to have his offence compounded.
 5. The offender of giving away a woman in marriage by way of *badl-e-sulh* shall be punished with a minimum imprisonment of 10 years.

Explanation: the term ‘offender’ with reference to giving of a woman in marriage by way of *badl-e-sulh* shall include the following persons:

- a. The concerned family members;
- b. *Nikah khuan* who performed the marriage with the knowledge that it is by way of *badl-e-sulh*;
- c. All the members of *panchayat/jirga*, if such a marriage was the result of the order of any *panchayat/jirga*; and
- d. The police officer with the jurisdiction of that area having shown negligence in such matters.

6. On the information of a marriage by way of *badl-e-sulh*, due to take place, all possible measures should be taken by the law enforcing agencies to ensure that such a marriage should not take place and the offenders must be apprehended with immediate effect.

7. **Section 304 (1)**

“The court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.”

8. **Section 338 F**

Explanation, on these lines:

“While the court is seeking guidance from *Sunnah*, reliance should be made only on the authentic *Ahadith* that are in conformity with the Holy Qur’an.

II Amendment by Repeal of certain prevalent provisions

1. Section 304(1)(b), P.P.C.
2. Section 306(b) & (c), P.P.C.
3. Sub-section 313 (2)

III Amendment in the prevalent provisions

1. Section 99, P.P.C.

‘*Honour*’ *killing* and such other offences must be expressly *included as an exception to right of private defence*, by suitably amending section 99, P.P.C.

2. Section 299 (m) P.P.C. and Section 305, P.P.C

i) By designating *State* as ‘*wali*,’ entitled to claim *Qisas* and *Diyat*, under the following circumstances on behalf of the:

- a) victim;
- b) legal heirs of the victim;
- c) deceased victim, having no *wali*;
- d) victim whose only *wali* is minor or insane.

OR

“under all circumstances.”

ii) *Section 299 (m) P.P.C.*

The entitlement of the legal heirs to claim *Diyat* in addition to *Qisas* must also be expressly mentioned.

3. The legal heirs of the victim shall not be entitled to demand the compounding of offence, under Section 309, 310, 313, 338E (1) of P.P.C., under the following circumstances:

- i) Where the legal heirs of the victim and offender are related to each other or have some vested interest between them.
- ii) Where the convict has committed '*fasad-fil-ard*' (mischief on earth), as the same being a crime against the entire society."

4. Section 310, P.P.C.

Giving of a woman in marriage as *badl-e-sulh* should be declared as 'void' or 'illegal,' instead of invalid.

5. Section 330 P.P.C.

Since *Diyat* is defined as compensation under section 299(e), P.P.C., therefore, the same should be distributed among the members of the family at the discretion of the Court under prevailing circumstances.

6. Section 337 Z P.P.C.

The amendment is required to be made on the lines mentioned in clause (6) herein above, for the distribution of *arsh/daman*, if the victim dies.

7. Section 338 E (1) P.P.C.

Amendment must be effected on the following lines:

"Even if *qisas* is waived by the women victim of hurt/injury, the court must ensure the compliance of the following measures:

- i) Proper medical treatment of the victim on the payment of cost by the offender;
- ii) Full monetary compensation to the victim;
- iii) Award of punishment to the offender under *Ta'zir*.
- iv) In the case of reunion of victim with her husband after their mutual consent, monitoring of the well being of the victim to be ensured through women union councilors or musalihat anjuman, panchayat, jirga or other existing committees formed for the protection of women's rights and welfare.

8. Section 2 of the Dissolution of Muslim Marriages Act, 1939

It must be amended to provide badl-e-sulh as a ground for the dissolution of marriage, if so desired by the woman.

IV General

For the strengthening of the overall justice system, the following multi-pronged strategy is required to be implemented:

- 1. Sensitization of the judiciary, law enforcing agencies and masses on gender issues, shairah and international commitments of the Government of Pakistan is required through regular advocacy like workshops, media and other strategies;

2. Training of the judiciary in *Shar'iah* law to enable them to understand Qur'an and *Sunnah* in their true spirit;
 3. Strict law enforcement by adopting the following measures in respect of police officials at all levels through:
 - a. Intensive need-based training programmes particularly on law, human right and modern investigation methods;
 - b. Appropriate remuneration packages to the police officials;
 - c. Awards and incentives on their best performance;
 - d. Severe punishment to the corrupt police officials; and
 - e. Improved Investigation method.
 4. Prohibition of *panchayat / jirga's* unlawful interventions and the award of severe punishment if the law is violated.
-

Annexure A

Concept Paper

1. Introduction

Islam is the state religion of Pakistan. During the course of islamization process, the Qisas & Diyat Ordinance, based on the concept provided under the Islamic laws (Shar'iah) was promulgated¹⁹¹ initially in the year 1990, and since then it was periodically re-promulgated till it was passed by parliament in 1997.

By virtue of this law, Qisas is defined as the punishment by causing similar hurt at same part of the body of the convict as he/she has caused to the victim or by causing offender's death, in the case of his/her committing murder.¹⁹² The right to Qisas in the cases relating to hurt can be compounded by the surviving victim or by the legal heirs (of the deceased victim) by accepting the specified compensation termed as 'Arsh¹⁹³' & 'Daman'¹⁹⁴. Diyat (blood money), ¹⁹⁵ on the other hand is the compensation payable to the legal heirs of the murdered victim¹⁹⁶.

All the offences under the subject law, however, may be waived or compounded¹⁹⁷ by the surviving victim or by any of the legal heirs of the murdered victim.

2. Situational Analysis

The law of Qisas & Diyat, as enacted and enforced in Pakistan re-conceptualized the offences relating to physical injury and murder in Islamic terms as understood in Pakistan and replaced about 40 relevant sections (299 to 338), of the Pakistan Penal Code, 1860 which were derived from British Common Law.

¹⁹¹ The Criminal Law (2nd Amendment) Ordinance No.VII of 1990

¹⁹² Sec.299(k) Pakistan Penal Code (PPC)

¹⁹³ Sec. 299 (b) PPC

¹⁹⁴ Sec. 299 (d) PPC

¹⁹⁵ Sec. 323 PPC

¹⁹⁶ Sec.299(e) PPC

¹⁹⁷ Sec.338E, PPC

One of the negative impacts of this re-conceptualization of the offence is that now the offences mentioned above are directed not against the legal order of the state but against the person of the victim. This approach to criminal offences reinforces the assumption that the murders of family members are a family affair and that prosecution and redress are not inevitable but may be negotiated. Thus if a father, brother or husband kills a woman of his family the prosecution case collapses as any of the legal heirs of the deceased has the right to waive the right of Qisas or compound the murder under ‘Qisas & Diyat Law’.

The subject law has to be examined in terms of its impact on killing in the name of ‘honour’ or ‘ghairat’ (**غیرت**), which although has no religious or legal sanctity in Pakistan but has strong roots in the socio-cultural traditions. It has been noted that even the judiciary shows leniency towards such crime. It has been held by the court that *‘murder committed on account of ‘ghairat’ is no offence*¹⁹⁸. And *‘in the cases involving element of ‘ghairat’, there is a tendency to justify imposition of lesser penalty*¹⁹⁹. Consequently, the rate of acquittal is fairly high as compared to conviction in cases of murder by family members. As for instance, according to the report of Inspector General of Police NWFP, since 1997 to May 31st 2003 the total number of cases registered are 172 murders and 67 other offences including beating in the name of honour out of which, so far 141 cases have been disposed off with only 10 (7%) convictions and 131(92.9%) acquittal. Similarly, during the same period in **Baluchistan** 57 murders took place in the name of honour, out of which 39 have been disposed of with 17 (33.3%) convictions and 22 (43.13%) acquittal. While in **Sindh** 910 honour killings cases had been registered during the same time period, out of which only 293 (32.19%) cases have been disposed off with only 25 (8.53%) conviction and 268 (91.4%) acquittal. Punjab, However, has the highest rate of honour killings that is 1707, out of which only 1142 cases have been disposed off with 320 (28%) convictions and 822 (71.87%) acquittal.

¹⁹⁸ NLR 1999 Cr. Lah.11

¹⁹⁹ 2000 P.Cr.L.J. 175

Reported Killings & Beatings in the name of Honour, 1997 – 31st May 2003

Province	No. of cases	No. of cases Disposed off	Convictions	Acquittal
NWFP	239	141	10	131
Baluchistan	57	39	17	22
Sindh	910	293	25	268
Punjab	1707	1142	320	822

The registered cases, however, are only the tip of the iceberg as mostly cases go unreported. The study of case law also reflects that less punishments were awarded in such cases compared to usual cases of murder.

It has also been noted that the women victims of domestic violence and even the victims of ‘ikrah-e-tam’, though required to be compensated by virtue of law²⁰⁰ hardly get compensation under our patriarchal and discriminatory socio-cultural set-up, resulting in acquittal/minimum punishments and without any burden of payment of compensation.

3. Objectives

To identify the lacunas/defects resulting anomalies in Qisas & Diyat Ordinance adversely affecting women’s rights and status in Pakistan and to come up with recommendations for the Government of Pakistan to bring necessary changes/amendments in the said legislation according to the correct interpretation of Islamic Injunctions, ensuring justice and removal of any discrimination against women.

4. Conceptual Framework of ‘Justice in Islam re. Qisas & Diyat Law’

Justice is one of God’s attributes in the three monotheistic religions. In Islam, it is listed as one of the ninety-nine most beautiful names of God i.e. ‘Aadil’ (judge).

²⁰⁰ Sec.299(g)PPC ‘ikrah-e-tam’ means putting any person, his spouse or any of his blood relations within the prohibited degree of marriage in fear of instant death or instant permanent impairing of any organ of the body or instant fear of being subjected to sodomy or zina-bil-jabr

The Holy Qur'an, of course, does not give a dictionary definition of justice but it links the concept to the notions of balance, equity²⁰¹, righteousness²⁰², proper measuring, truth²⁰³, personal growth and development and the state of natural order. It contrasts justice with transgression, oppression, evil, falsehood²⁰⁴ and the disturbance in the natural order (fitnah)²⁰⁵.

Justice in Islam can also be visualized from the names of Allah Almighty such as 'Rehman' (رَحْمَن) & 'Raheem' (رَحِيم) as well as 'Jabar' (جَبَّار) & 'Qahar' (قَهَّار). This closely links the theology with practice.

Under Qisas & Diyat²⁰⁶ law, as spelled out in the Holy Qur'an, the legal heirs of the victim have the right to claim an equivalent physical harm to the offender, as the punishment of Qisas whether it is the case of homicide or hurt / injury. The legal heirs of the victims, however, have power / right to reduce the penalty, accept monetary compensation (Diyat or blood money), or forgive the offender, which could even avert capital punishment / death punishment and that leads to compassion and forgiveness, which is described as takhfif min rabbikum means (reduction or remission from the Merciful Lord) (this concept is to avoid vengeance passing from one generation to another which was prevalent at the relevant time).

Thus the law of Qisas and Diyat is the reflection of the concept of justice in Islam. But unfortunately, due to certain mind set of particular people with vested interest the concept has been wrongly interpreted and led to wrong and defective drafting of law. If legislation is defective then implementation certainly be difficult if not impossible. It has been interpreted, enacted and enforced in Pakistan in a manner that is subversive to the rights and status of women as enshrined in the Islamic injunctions. This law which

²⁰¹ Al An'am 6:152, Al Qur'an, translation by Abdullah Yousuf Ali

²⁰² Al Hadid 57:25, Al Qur'an, translation by Abdullah Yousuf Ali

²⁰³ Al Jathiyah 45:22, Al Qur'an, translation by Abdullah Yousuf Ali, Al Qur'an, translation by Abdullah Yousuf Ali

²⁰⁴ Ali Imran 3:25; Al An'am 6:160; Al Yusuf 10:47; Al Nahl 16:111

²⁰⁵ Al Baqrah 2:193, Al Qur'an, translation by Abdullah Yousuf Ali

²⁰⁶ Al-Baqrah 2: 178, Al Qur'an, translation by Abdullah Yousuf Ali

was meant to protect the oppressed persons has been used to protect the offenders in the case of ‘honour killings’ and domestic violence.

The in-depth study of some of the cases of ‘honour killings’ revealed that in cases where murder takes place due to old enmity or certain wave of fury and provocation the male member of the family, to save his own life, would also kill the woman of his own family / tribe and accuse both of them for having an illicit relationship with each other. This is taken as sudden provocation for murder. In such circumstances the whole family and even the clan encourage such killings and the offender is forgiven under Qisas and Diyat law. Similarly, the offender is forgiven for murdering a woman on the ground of her contracting marriage with a person of her choice, as against the wishes of her family as it brings dishonor according to them. There is no scope for such heinous crimes in shari’ah as the Holy Qur’an ordains to do justice and²⁰⁷ prohibits unjustified killings in surah Al-Maida²⁰⁸ and surah Al-Nur²⁰⁹.

The violation of human rights of which women’s rights are an integral part, is not only a sin but also a crime, as Islam considers crime an act of injustice towards society, a sin against oneself and a transgression against Allah. Punishment is not atonement nor does it erase the sin. A sin is only forgiven through repentance. However, crime is an offence against the society which cannot be forgiven by repentance alone.²¹⁰ To punish the offender appropriate legislative framework is required. The punishment must be a deterrent to protect the society from recurrence of the crime. It should also be an example for others. In short the purpose of the law must be crime deterrent and preventive and the implementation must be effective to achieve the objective.

Hence, in order to enforce the Islamic concept of justice system and to eliminate all forms of discrimination against women in Pakistan. The provisions of the Law of Qisas

²⁰⁷ Al-Nisa, 4:58 and Al Hujurat, 49:9 Al Qur’an, translation by Abdullah Yousuf Ali

²⁰⁸ Al-Maida 5:32, Al Qur’an, translation by Abdullah Yousuf Ali

²⁰⁹ Al-Nur 24:13, Al Qur’an, translation by Abdullah Yousuf Ali

²¹⁰ Mufti–Islam Online Fatwa committee (26-May-2001)

& Diyat as incorporated in the PPC are adversely affecting status and rights of women and must be reviewed in the light of the Qur'anic principles of justice and equity and Sunnah . And in order to ensure the correct interpretation of shari'ah, the enactment and the enforcement of Qisas & Diyat law must be fully understood and analyzed by studying and understanding the secondary sources of laws. Further, to meet the challenges of today's world Ijtihad (judicial activism) must be invoked which is the need of the day.

5. Scope

The focus of the study would be on exploring answers to the following questions with particular reference to women, wherever so needed:

- i. Whether the offences under Qisas & Diyat, as spelled out in Shar'iah are directed against the legal order of the State or against the person of victim?
- ii. Whether the compounding of murder committed in the name of 'honour' (ghairat) as drafted and implemented in Pakistan is Islamic?
- iii. Whether the waiver of the right to Qisas or compounding of offence at any stage by any one of the legal heirs is in accordance with Islamic injunctions, particularly, when the crime is alleged to have been committed in the name of 'honour or 'ghairat';
- iv. Could the waiver of the right to Qisas or the compounding of offence by the women victims of violence be considered Islamic and be allowed by the Courts?
- v. Whether the following exemptions from Qisas as provided under the law are in accordance with Quran & Sunnah?
 - When an offender guilty of committing murder of his child, or grandchild how low-so-ever u/s306(b), PPC; &
 - When any wali of the victim is a direct descendent, how low so-ever, of the offender u/s 306[©] PPC.

- vi. Whether application of law of inheritance for the disbursement of Diyat among heirs of the victims as provided u/s 330 of Pakistan Penal Code is Islamic and valid?
- vii. Whether Vani or Swara i.e. giving of female relative of accused in marriage as badl-e-sulh is invalid (as declared invalid u/s 310, PPC) or void in Islam? &
- viii. Can the law of Qisas & Diyat which is based on Muslim Personal Law be applicable to non-Muslims living in an Islamic country?
- ix. Is it possible to meet the criteria of Tazkiyat-ul-Shahood as required for Qatl-e-amd and hurt u/s 304, PPC read with Article 17 of Qanoon-e-Shahadat?
- x. What measures be adopted to curb the social evil of 'Honour killings' & Swara / Vani in Pakistan?

6. Methodology

Phase - I

- Preliminary review of relevant laws in Pakistan
- Framing of Issues
- Questionnaire development
- In-depth research study:

1) Provisions in the Holy Qur'an & Sunnah and its interpretation

2) Secondary sources:

1. Ijma or the Consensus of Muslim scholars
2. Ijtihad or judicial activism
3. Qiyas / analogy
4. Relevant laws (1) in Pakistan (2) in other Islamic countries
5. Relevant publications on the subject

Phase – II

- Interviews with the National scholars and obtaining of opinions from International experts
- Focus group discussion with (FGD) (1) religious scholars, religious political leaders & the heads of religious institutions; (2) parliamentarians, public sector officials and civil society (3) judges & lawyers
- Brain storming session with the people from different segments of life at provincial & district levels.

Phase – III

- Research report writing
- Data analysis and Recommendation
- Approval of the report by NCSW

Phase – IV

- Printing
- Launching & dissemination at National & Provincial level, respectively
- Feedback on research.

Annexure B

Statistics of the registered cases of ‘Honour’ killing in Pakistan²¹¹

Baluchistan

Year	Reported cases of ‘Honour’ Killing	Status of the case				
		Pending	Trial	Disposed	Conviction	Acquittal
1/1/03to 31/5/04	12	1	8	3(25%)	1(33.3%)	2(66.6%)
2002	7	3	2	2(28.5%)	1(50%)	1(50%)
2001	8	0	1	7(87.5%)	4(57.14%)	3(42.85%)
2000	5	0	0	5(100%)	1(20%)	4(80%)
1999	13	0	1	12(92.3%)	7(58.33%)	5(41.6%)
1998	9	2	0	7(77.7%)	1(14.28%)	6(85.71%)
1997	7	0	2	5(71.42%)	2(40%)	3(60%)
1996	18	3	1	14(77.7%)	3(21.42%)	11(78.57%)
1995	12	1	0	11(91.6%)	3(27.27%)	8(72.72%)
1994	10	2	0	8(80%)	2(25%)	6(75%)
1993	9	2	0	7(77.7%)	2(28.5%)	5(71.42%)
Total	110	14	15	81(73.6%)	27(33.3%)	54(66.6%)

Islamabad

²¹¹ The statistics have been obtained from all the police departments of Pakistan.

According to the police department there has been no registered case of ‘honour killing’ in Islamabad, during 1993 to 30th May 2003.

Honour-killing Cases. (Cont.....)

NWFP

Year	Offence			Total	Status of the case				
	Murder	Beating	Other		Pending	Trial	Disposed	Conviction	Acquittal
1/1/03to 31/5/04	8	1	9	18	3	15	0	0	0
2002	42	1	5	48	3	28	17(35.4%)	0	17(100%)
2001	26	0	12	38	2	14	22(57.8%)	0	22(100%)
2000	26	2	7	35	2	9	24(68.5%)	5(20.8)	19(79.16%)
1999	19	0	16	35	2	4	29(28.8%)	3(10.3%)	26(89.65%)
1998	23	1	6	30	1	4	25(83.3%)	1(4%)	24(96%)
1997	28	1	6	35	5	6	24(68.5%)	1(4.1%)	23(95.83%)
1996	20	0	12	32	4	2	26(81.25%)	0	26(100%)
1995	24	2	11	37	7	5	25(67.5%)	1(4%)	24(96%)
1994	20	0	10	30	1	2	27(90%)	1(3.7%)	26(96.29%)
1993	22	1	12	35	3	0	32(91.4%)	4(12.5%)	28(87.5%)
Total	258	9	106	373	33	89	251(67.29%)	16 (6.37%)	235 (93.6%)

Honour-killing Cases. (Cont.....)

Punjab

Year	Reported cases of 'Honour' Killing	Status of the case				
		Pending	Trial	Disposed	Conviction	Acquittal
1/1/03to 31/5/04	100	72	24	4(4%)	2(50%)	2(50%)
2002	218	77	55	86(39.4%)	16(18.6%)	70(81.39%)
2001	223	40	11	172(77.13%)	47(27.32%)	125(72.7%)
2000	247	32	12	227(91.9%)	61(26.87%)	166(73%)
1999	208	21	31	156(99.03%)	53(33.97%)	103(66%)
1998	226	11	26	189(83.62%)	67(35.44%)	122(53.9%)
1997	218	13	38	167(76.6%)	61(36.52%)	106(63.4%)
1996	210	16	33	161(76.6%)	56(34.78%)	105(65.2%)
1995	232	16	55	160(68.96%)	57(35.62%)	103(64.3%)
1994	185	7	19	159(85.94%)	51(27.56%)	108(67.9%)
1993	181	3	10	168(92.81%)	64(38.09%)	104(61.9%)
Total	2248	308	314	1649(73.3%)	535(32.44%)	1114(67.5%)

Honour-killing Cases. (Cont.....)

Sindh

Year	Reported cases of 'Honour' Killing	Status of the case				
		Pending	Trial	Disposed	Conviction	Acquittal
1/1/03to 31/5/04	51	36		3(5.88%)	1(33.3%)	2(66.6%)
2002	124	87		0	0	0
2001	109	71		20(18.34%)	1(5%)	19(95%)
2000	162	93		55(33.95%)	2(3.63%)	53(96.36%)
1999	172	87		66(38.37%)	5(7.57%)	61(92.42%)
1998	134	50		69(51.49%)	11(15.44%)	58(84.05%)
1997	158	69		80(50.63%)	5(6.25%)	75(93.75%)
1996	156	60		82(52.56%)	2(2.43%)	80(97.56%)
1995	133	49		71(6.79%)	3(4.22%)	68(8.45%)
1994	162	63		91(71.65%)	6(6.59%)	85(93.4%)
1993	127	55		80(67.99%)	5(6.25%)	75(93.75%)
Total	1488	720		617 (41.46%)	41(6.64%)	576(93.3%)

Annexure C

Statistics of the registered cases of domestic violence against women in Pakistan²¹²

Baluchistan

Year	Domestic Violence			Total
	Murder	Beating	Other	
1/1/03to 31/5/04	2	1	0	3
2002	7	5	1	13
2001	7	6	0	13
2000	7	1	2	10
1999	6	3	0	9
1998	5	0	0	5
1997	3	0	0	3
1996	7	2	0	9
1995	4	2	0	6
1994	1	1	0	2
1993	1	0	0	1
Total	50	21	3	74

²¹² Statistics obtained from all the police departments of the provinces of Pakistan.

Cases of Domestic Violence (Contd.....)

Islamabad

Year	Domestic Violence			Total
	Murder	Beating	Other	
1/1/03to 31/5/04	0	0	0	0
2002	9	0	0	9
2001	7	0	0	7
2000	7	0	0	7
1999	4	0	0	4
1998	6	0	0	6
1997	2	0	0	2
1996	0	0	0	0
1995	1	0	0	1
1994	4	0	0	4
1993	1	0	0	1
Total	41	0	0	41

Cases of Domestic Violence (Contd.....)

NWFP

Year	Domestic Violence			Total
	Murder	Beating	Other	
1/1/03to 31/5/04	38	35	53	126
2002	70	83	157	310
2001	68	69	147	284
2000	41	82	130	253
1999	42	73	155	270
1998	51	70	118	239
1997	37	59	117	213
1996	42	62	107	211
1995	34	56	82	172
1994	43	48	66	157
1993	55	44	81	180
Total	521	681	1160	2415

Cases of Domestic Violence (Contd.....)

Punjab

Year	Domestic Violence			Total
	Murder	Beating	Other	
1/1/03to 31/5/04	130	152	114	396
2002	303	296	209	808
2001	327	388	334	1049
2000	289	253	420	962
1999	311	212	314	837
1998	312	188	225	725
1997	317	193	336	846
1996	302	186	230	718
1995	259	185	260	704
1994	225	201	225	651
1993	227	150	257	634
Total	3002	2404	2924	8329

Cases of Domestic Violence (Contd.....)

Sindh

Year	Domestic Violence			Total
	Murder	Beating	Other	
1/1/03to 31/5/04	73	5	9	87
2002	170	14	24	208
2001	154	16	57	227
2000	128	7	39	164
1999	126	14	21	161
1998	128	15	15	158
1997	99	10	15	124
1996	80	9	33	122
1995	83	13	25	121
1994	71	11	13	95
1993	90	12	16	118
Total	1003	126	267	1498

Statistics of the registered cases of acid throwing on women

Year	No. of cases				
	Sindh	Punjab	Baluchistan	NWFP	Islamabad
2001	0	11	0	38	0
2002	0	16	0	46	0
2003	2	7	0	68	0

Statistics as reported by Human Rights Commission on Pakistan,²¹³ reflecting a sharp rise in the cases of acid burning in Punjab.

Year	No. of registered cases
2001	9
2002	46
2003	70

²¹³ State of Human Rights in 2003, Human Rights Commission of Pakistan, page 247

Annexure D

Meeting with Mr. Javed Ahmed Ghamidi, Religious Scholar (19th November 2003)

(To obtain opinion from different stake holders a questionnaire was prepared and sent in advance to the persons whose opinions are given in the following pages)

The write-up was approved by Mr. Javed Ahmed Ghamidi on telephone (31st March 2004)

Mr. Ghamidi not only answered to our questions but also shared his publications titled 'Meezan' & 'Burhan', on the subject. The proceeding of the session with him was in the form of question/answer supported by his views reflected in his publications mentioned herein above.

i) Whether the offences under Qisas & Diyat, as spelled out in Shar'iah are directed against the legal order of the State or against the person of victim?

Ans. The State is a main party to determine and decide whether the accused has committed the offence. Once the crime has been proved, the victims of the legal heirs will step into the scene to either demand or forgive Qisas. The decision of all the legal heirs must be unanimous.

Further, since the murder otherwise through due course of law is a crime against the society as well hence even if Qisas is forgiven by the legal heirs, the Court has the authority to award punishment to the offender under Ta'zir.

*In case the legal heirs of the victim are biased and their interest is in conflict with victims interest and are more sympathetic with the offender then in that case State will be the complainant and will have the same authority as that of the legal heirs of the victim.*²¹⁴

Q.ii. Whether the compounding of murder committed in the name of ‘honour’ (ghairat) is Islamic?

Ans. *While quoting Surah Al Baqra verse 178/179, he stated that Qisas is an obligation on the believers and if some concession is granted by the legal heirs of the victim then that must be followed. There is a severe punishment for the transgressors.*

In the words of imam Ameen Ahsan Islahi in Tadabur-e-Qur’an, following duties have been imposed on to the community with reference to this crime (honour-killing):

1. *Each incident of murder must generate a wave of anxiety until and unless Qisas is not taken. Each person must feel that he has been driven insecure*²¹⁵.
2. *Whole community must find out the offender as the murder is the killing of the whole people.*
3. *No one should overlook the situation if someone is in danger.*
4. *If someone hides the criminal, give wrong evidence, become surety for the criminal or supports/protects the criminal it is as if he is doing that for the murderer of his own father, brother or son.*
5. *Helping the legal heirs in Qisas is actually giving life to the victim, as the Holy Qur’an states in Sura Al Baqra verse 179, that : in the law of equality there is (saving of) Life to you. O’ ye men of understanding.”*

Q.iii. Whether the waiver of the right to Qisas or compounding of offence **at any stage by any one of the legal heirs** is Islamic, particularly, when the crime is alleged to have been committed in the **name of ‘honour or ‘ghairat’**;

²¹⁴ Javed Ahmed Ghamidi, ‘Mezan’, page Np.291, Dar-ul-Ishraq, 293 B, Model Town, Lahore

²¹⁵ Javed Ahmed Ghamidi, ‘Mezan’, page Np.291, Dar-ul-Ishraq, 123 B, Model Town, Lahore

Ans. *Firstly, the question of Qisas or compounding comes only after the crime is proved.*

Secondly, all the legal heirs must forgive Qisas. The decision of one legal heir cannot operate against the rest of the legal heirs.

Killing in the name of 'honour' is a pre-meditated murder and there should be no compounding of offence when the family members have sympathies for the offender.

iv. *Could the waiver of the right to Qisas or the compounding of offence by the women victims of violence be considered Islamic and be allowed by the Courts?*

In our society women can hardly assert their rights hence as a matter of State policy, the Court should not allow the compounding of offence by the women victim of violence.

Q.v. Whether a man guilty of committing a murder of his wife, leaving behind a child is exempted from Qisas, under Shar'iah?

Ans. There is no such provision in Qur'an and Sunnah.

vi. Whether the mode for the disbursement of Diyat among heirs of the victims according to their respective shares in inheritance as provided u/s 330 of Pakistan Penal Code is Islamic and valid?

Ans. *Diyat is a compensation to the legal heirs of the victim and not inheritance. Hence the Court is under obligation to hand that over to the most deserving legal heirs under the circumstances of the case.*

vii. a) Whether Vani or Swara i.e. giving of female relative of accused in marriage as badl-e-sulh is invalid (as declared invalid u/s 310, PPC) or void in Islam?

Ans. Giving of a human being as badl-e-sulh is totally un-Islamic. Hence it must be declared 'void ab initio' and severe punishment be awarded to the persons involved in this crime.

b) What punishment can be prescribed for Vani / Swara?

Ans. Severe punishments must be awarded to the persons involved in this crime.

Q.viii. Can the law of Qisas & Diyat be applicable to non-Muslims living in an Islamic country?

Ans. Yes.

ix. Is it possible to meet the criteria of Tazkiyat-ul-Shahood as required for Qatl-e-amd and hurt u/s 304, PPC read with Article 17 of Qanoon-e-Shahadat?

Ans. Very rare. Since, the Holy Qur'an has not restricted any particular method for the proof of the crime hence in Islam the offence can be proved through any logical method under the circumstances as for instance medical evidence, post mortem report, finger prints, oath(s), witnesses²¹⁶. It is, therefore, even if the witness has been turned hostile other evidences be taken into consideration rather than letting the offender go scot-free.

x. What measures be adopted to curb the social evil of 'Honour killings' & Swara / Vani in Pakistan?

Ans. There has to be a multi-pronged strategy involving the following:

- 4. Sensitization of the judiciary, Law enforcing agencies & masses*
- 5. Foolproof legal framework*
- 6. Strict law enforcement.*

²¹⁶ Javed Ahmed Ghamidi, 'Burhan', page Np.24, Dar-ul-Ishraq, 123 B, Model Town, Lahore

Meeting with Chief Justice ® Sajjad Ali Shah (1st December 2003)

The write up was approved by him on telephone (31st March 2004).

He opined that Pakistan Penal Code is derived from Common laws that gave much importance to the Customary Laws. The earlier provision of grave and sudden provocation in PPC was not the law but the description of mitigating circumstances. Although that provision was omitted upon the promulgation of Qisas and Diyat Ordinance but the laws are still being interpreted by giving due consideration to the mitigating circumstances.

The question/answer session with him was as follows:

Q.i. Whether the offences under Qisas & Diyat, as spelled out in Shar'iah are directed against the legal order of the State or against the person of victim?

Ans. Shari'ah does give right to the legal heirs of the victim to demand Qisas or to compound the offence but it is the duty of the State primarily that all facts be brought on record, crime be proved and then it assists the legal heirs in getting their due right. Further, the Court must also ensure that the justice is done.

Q.ii. Whether the compounding of murder committed in the name of 'honour' (ghairat) is Islamic?

Ans. Not at all.

Q.iii. Whether the waiver of the right to Qisas or compounding of offence at any stage by any one of the legal heirs is Islamic, particularly, when the crime is alleged to have been committed in the name of 'honour or 'ghairat';

Ans. There should be no concession in the case of killing in the disguise of 'honour'. Honour killing is 'qatle-e-amd' and there should be no compounding in this case. Compounding of such offence is like giving a free hand for killing women members of the family. That is why killings in the name of honour are rampant in interior Sindh and men take pride in committing this offence.

Q.iv. Could the waiver of the right to Qisas or the compounding of offence by the women victims of violence be considered Islamic and be allowed by the Courts?

Ans. It is most difficult for the women to get their due rights and status in our society. It is, therefore, the judiciary which must ensure that the women victims are fully compensated for the wrong done to them.

Q.v. Whether a man guilty of committing a murder of his wife, leaving behind a child is exempted from Qisas, under Shar'iah?

Ans. No. In fact, waiver of this exemption to the father of the only surviving child would lead to deterrence for the potential perpetrator.

Q.vi. Whether the mode for the disbursement of Diyat among heirs of the victims according to their respective shares in inheritance as provided u/s 330 of Pakistan Penal Code is Islamic and valid?

Ans. Diyat is compensation and not inheritance hence the Fatal Accident Act instead of the law of inheritance must apply.

Q.vii. a) Whether Vani or Swara i.e. giving of female relative of accused in marriage as badl-e-sulh is invalid (as declared invalid u/s 310, PPC) or void in Islam?

Ans. *It is totally un-Islamic and should be declared void ab initio.*

b) What punishment can be prescribed for Vani / Swara?

Ans. *Severe punishment must be awarded to both the person giving the girl in marriage as badl-e-sulh and to the bridegroom.*

viii. Can the law of Qisas & Diyat be applicable to non-Muslims living in an Islamic country?

Ans. *Yes.*

Q.ix. Is it possible to meet the criteria of Tazkiyat-ul-Shahood as required for Qatl-e-amd and hurt u/s 304, PPC read with Article 17 of Qanoon-e-Shahadat?

Ans. *Hardly any, that is why mostly punishments are given under Ta'zir.*

Q.x. What measures be adopted to curb the social evil of 'Honour killings' & Swara / Vani in Pakistan?

Ans. *Increased literacy, awareness and training of the judiciary and law enforcing agencies.*

Meeting with Justice ® Sardar Muhammad Dogar, retired judge of the Federal Shariat Court (14th November 2003)

The write-up was duly amended and approved by Justice ® Sardar Muhammad Dogar on phone (15th March 2004

While responding to question No. 1 i.e., whether the offences under Qisas & Diyat, as spelled out in Shar'iah are directed against the legal order of the State or against the person of victim? He opined that it is both against the legal order of the state as well as person of victim. State being responsible for law and order, hence it is a necessary party. While, the victim being the sufferer has the right to have recourse to law. His grievances cannot be left entirely to the State.

To protect the honour of the family one must have recourse to law rather than taking law in ones own hands.

Investigating procedure is required to be improved in this context through instruction for getting such cases investigated by officers of high integrity and knowledge. Investigation must be supervised by an officer not less than the rank of Sub-Inspector.

With reference to swara / vani, he firmly believes that it is un-Islamic hence the addition of a penal provision for this offence in law is imperative. A provision should also be made in the Pakistan Penal Code for trying and punishing the bridegroom as

well as the guardian or wakil of the bride, nikah khuan/ nikah registrar or any other concerned person who consents / assents to marriage on such ground.

Further, a clause for the dissolution of marriage on the ground of vani / swara should also be added in the legislation as a ground for seeking dissolution of marriage.

بسم اللہ الرحمن الرحیم

ڈاکٹر عطاء الرحمن

امام خطیب جامع مسجد مولانا عبدالعزیز

0300-19383937

مدرسہ دارالرشاد چمن پھاٹک کوئٹہ

عنوان: اسلام کا تصور انصاف قصاص اور دیت آرڈیننس ایکٹ 11 (1997) کے بارے میں
مندرجہ ذیل عنوان کے تحت جو تفصیل مجھے بھیجی گئی تھی اس سے میں جو کچھ سمجھا ہوں وہ درج کرتا ہوں

Concept of Justice in islam vs Qisas & Diyat Ordinance Act 11 1997.

**That the murder of family member is a family affair. The law
provides for compounding of offence including murder**

کاروکاری اور غیرت کے نام پر قتل کے معاملے میں خاندان کے لوگ صلح کر لیتے ہیں کچھ خاندان کے لوگ بیٹھ کر اس معاملے میں ماں، باپ، بہن، بھائی اور اولاد مل کر قتل کا معاملہ خانگی طور پر حل کر لیتے ہیں جس سے نا انصافی ہو رہی ہے، جب اسلام غیرت والا دین ہے، مقصد یہ ہے جو (Lacuna) کمی رہ گئی ہے اسے دور کیا جائے اس طرح قانون کا ناجائز استعمال Misuse اور اس کی غلط تشریح Misinterpretation کی گئی ہے جس سے عورت کا مقام status اور اس کے حقوق rights الٹے مجروح Adversely Affected ہو رہے ہیں۔ اس پورے معاملے کے کچھ فکری، کچھ علمی اور عملی طور پر کچھ انتظامی، سیاسی، معاشرتی، ثقافتی اور قانونی پہلو ہیں۔

فرد خاندان اور ریاست تین مختلف دائرے ہیں، جن کا فکری، علمی اور عملی اختلاط معاشرے کو جنم دیتا ہے۔

علاوہ ازیں وہ خاندان اور ریاست اور معاشرے کے ساتھ جس طرح رہا اس کا ذمہ دار بھی وہ خود ہے۔ اور اس میں جوابدہ ہوگا۔ اپنی جان، مال اور آبرو کے بارے میں وہ خود مختار ہے، اس کی حفاظت، اس کا استعمال قانون کے حدود میں اس کا حق بھی ہے اور فریضہ بھی۔ خاندان سے بھی، ریاست اور معاشرے سے بھی اس کو جان مال و آبرو کے نقصان یعنی نقصان پر اجازت نہیں کہ کسی کی اطاعت کرے۔ یا کسی کی غلامی اختیار کرے، وہ صرف خدا کا غلام ہے۔ فتنہ اس لئے سب سے بڑا جرم ہے (ان حقوق کو ریاست یا خاندان کے ہاتھ اسلام نہیں دیتا)۔ فتنہ کا عربی میں وہ ترجمہ نہیں جو اردو میں بولا جاتا ہے۔ عربی میں اس کا مطلب Persecution ہے، کسی کو لالچ دے کر یا جان کی دھمکی دے کر اس کی آزادی، اس کی رائے اور نظریے کو تبدیل کیا جائے۔ اسلام میں قطعی حرام ہے ”الفتنة اشد من القتل“ ”فتنہ قتل کر دینے سے زیادہ شدید جرم ہے۔“

خاندان۔

والدین اور اولاد، یعنی شوہر بیوی، بہن بھائیوں پر مشتمل ہوتا ہے۔ اس کی بنیاد پر ہی میراث کی تقسیم کی گئی ہے۔ اس کے حقوق میں کوئی ریاست مداخلت نہیں کر سکتی۔ اس کی اپنی شناخت، اپنے اصول اور ضوابط ہیں، جس کو تبدیل کرنے کا حق کسی کو نہیں دیا جاسکتا۔ ان حقوق کی اپنی حیثیت اور حکمت ہے۔

☆ اس کے حقوق چار دیواری کے تمام حقوق۔

☆ ایک عورت کے گرد یہی چار دیواری ہوتی ہے۔ اور اس طرح ایک مرد کے گرد بھی یہی چار دیواری ہے۔

☆ ۱۔ ماں، باپ ۲۔ بہن، بھائی ۳۔ اولاد ۴۔ شوہر۔

☆ ان چار قریبی دیواروں سے زیادہ، اس سے متعلق نہ تو ریاست ہو سکتی ہے اور نہ معاشرہ اور نہ دور کے رشتہ دار۔

خاندان کے حقوق کو محدود کرنا بہت خطرناک ہوگا، دراصل فرد کے حقوق کو اولیت حاصل ہے۔ دوسری حیثیت خاندان کے حقوق ہیں، ریاست کو یہ حق دینا یا معاشرے کو حوالے کرنا جس سے زیادہ خطرہ ہے، کہ وہ اس کے حقوق کی اتنی بھی حفاظت نہ کر سکتا، جتنی کہ فرد کرتا ہے یا خاندان، ریاست اور معاشرہ تو ہر جگہ اپنی credibility کھو چکا ہے۔ خصوصاً اس دور میں۔ قرآن میں جو آیات ہیں وہ واضح ہیں۔

☆ فَكَانَ يَوْلِيهِ سُلْطَانًا۔ اس کے (ولی کو) حق حاصل ہے کہ اس کے قتل کے بارے میں فیصلہ کرے جو مختلف حالات میں مختلف ہوتے ہیں۔

☆ فَلَا يُسْرَفُ فِي الْقَتْلِ۔ اس معاملے میں زیادتی کی اجازت نہیں۔

☆ إِنَّهُ كَانَ مَنْصُورًا۔ اسلامی ریاست مدد کرے گی ولی کی۔

اس طرح فکری بنیاد اور علمی بنیاد واضح ہوگئی اور اسلامی قانون کی روح بھی۔ اب عملی بنیادوں پر ہم دیکھتے ہیں کہ قتل کیوں ہے۔ معاشی بنیاد پر۔

☆ جائیداد کے لئے بیٹی کا قتل۔ مقابل شوہر اور اولاد نہ ہوں تو بھائی تو ہیں۔

☆ جائیداد کے لئے بہن کا قتل۔ مقابل میں والدین، اولاد اور شوہر ہیں۔

☆ جائیداد کے لئے بیوی کا قتل۔ مقابل میں والدین، بھائی بہن اور اولاد ہیں۔

Presumption درست نہیں ہے کہ کوئی وارث نہیں ہے اور اس معاشرے کی انتہائی اہم کڑی یعنی خاندان کے افراد طاقتور نہ ہوں، جو ہر صورت میں تین دیواریں ہیں جو موجود ہوتی ہیں۔ اگر ایسے زندہ لوگ نہ ہوں تو پھر وہ معاشرہ اور حکومت بھی کسی کام کا نہیں۔ بصورت دیگر کوئی نہ ہوں تو پھر مستثنیات میں آتا ہے جس کو ریاست کی تصرف میں لیا جا سکتا ہے چاہے (اِنَّهٗ كَانَ مَنْصُوْرًا سے مراد ولی) ہے اگر وہ موجود نہ ہو تو پھر ریاست ہے۔
نفسیاتی اور ثقافتی بنیاد

☆ نفسیاتی اور ثقافتی بنیاد یہ ہے کہ اسلامی معاشرہ سرحد اور بلوچستان میں ہے تو تعداد کم ہے، پنجاب کا مذہب سے تعلق بہت کم ہے۔ آبادی کے تناسب سے بھی تعداد میں فرق ہے۔ مگر جن معاملات میں خاندان نے فیصلے کئے وہ بھی مکمل آئے۔ اسلئے وہاں عملی صورت حال ایتر ہے۔ اس لحاظ سے اسلامی اخلاقیات کی بنیاد کو اجاگر کیا جائے اور اس کی وجوہات بتائی جائیں۔

کچھ سوالات کئے گئے ہیں ان کے متفرق جواب حاضر ہیں۔

☆ غیرت کے نام پر قتل کی نہ تو اجازت ہے اور نہ اس میں نرمی کی جاسکتی ہے۔
اور نہ اس کی سفارش قرآن اور سنت سے ثابت ہے، اور نہ اس کو اس طرح
لیا جاسکتا ہے۔ پھر اس مسئلہ کا سر اسر تعلق انتظامی ہے، جس کو قانون کی
 بجائے انتظامی راستے سے حل کرنا چاہئے، بلکہ کر دیا گیا ہے (یہ میرے علم
میں ہے)۔ عبید اللہ ابن عمر رضی اللہ عنہ کا معاملہ مد نظر رکھا جاسکتا ہے۔
قانونی طریق کار اختیار کرنا اس طرح فرض ہے جس طرح قصاص..... فرض کیا گیا ہے۔

☆ سیکشن ۳۱۰ کے تحت پہلے ہی سوارہ اور دہنی کا معاملہ invalid قرار دے دیا
گیا ہے، بلکہ صوبہ سرحد حکومت کے لاء سیکرٹری کی طرف سے جو ورکشاپ
ہوئی تھی اس کی سفارشات کو مرکزی طور پر اختیار کیا جاسکتا
ہے۔ (۱۱/۱۰ دسمبر ۲۰۰۳)

☆ شہادت کے لئے قانون تو بنانا ہوگا، اور اسلام کے قانون میں کوئی تبدیلی اس
لئے ممکن نظر نہیں آتی کہ اس کے زیادہ بدترین نتائج نکلیں گے۔ بے گناہ
لوگ خطرے میں پڑ جائیں گے۔
(ان جَاءَكُمْ فَاسِقٌ بِنَبَاٍ فَتَبَيَّنُوا) سورة الحجرات PAC 304 (از شکل 17)۔
بے یار و مددگار عورت رملہ تو ”محرابہ“ میں آتا ہے اس کی سزا اور قانونی طریق مختلف ہیں۔

☆ بچے کا قتل بھی اتنا ہی سنگین ہے، کوئی استثناء نہیں ہے۔

☆ غیر مسلم کا معاملہ اس موجودہ معاملے سے متعلق نہیں ہے، بہر حال اسلام کا
قانون ارفع ہے، اس کے تحفظات بہت اہم ہیں، اور مسلم و غیر مسلم کی جان،
مال اور آبرو برابر ہے۔ مسلمان کے ساتھ..... اسلامی ریاست میں۔

میں چونکہ NCHO کی میٹنگ میں مدعو کیا گیا ہوں آپ کی دعوت سے پہلے اس لئے مجبور ہوں۔ شرکت نہیں کر سکتا۔

بسمہ تعالیٰ

السید ابن الحسن الرضوی آل باقر العلوم

امام الجمعۃ فی جامع الخوجۃ الشیعۃ الاثنی عشریہ کھاردار کراچی

بسم اللہ الرحمن الرحیم

۱۔ حق اقتصاص:

حق اقتصاص (قصاص لینے کا حق) ابتداءً مجنی علیہ (Victim) اور اولیاء دم (legal heirs) کے لئے ثابت ہے، اور وہ شرائط قصاص کے فراہم ہونے کی صورت میں جانی (مجرم) کو قصاص یا اس سے مطالبہ دیت (یا کوئی اور شے دیت سے کم یا زیادہ باہمی رضامندی سے) اور یا معاف ۲ کر سکتے ہیں، لیکن یہ ان معاملات میں حکومت کے حق مداخلت کے منافی نہیں ہے بلکہ بعض موارد میں خود حاکم ولی ہوتا ہے، اور اگر اولیاء دم کسی بھی وجہ سے مجرم کو معاف کر دیں اور قصاص ساقط ہو جائے تب بھی معاشرہ کے وسیع تر مفاد میں حکومت مجرم کو تعزیری سزائیں دے سکتی ہے۔

۲۔ قاتل کو معاف کرنا:

قتل عمد میں اولیاء دم قاتل کو معاف کر سکتے ہیں اور معاف کرنا اسلام میں ایک پسندیدہ عمل ہے لیکن یہ اسی صورت میں ہے کہ جب معافی اور درگزر، ظلم و سرکشی میں معاون نہ ہو جیسا کہ ارشاد ہوتا ہے (وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ) اور غیرت کے نام پر قتل جیسی معاشرتی برائیوں کے پھیلنے کا سبب نہ بنے، اس صورت میں اولیاء دم کی طرف سے حق قصاص کو استعمال کرنے کو ترجیح حاصل ہے اور اگر اولیاء دم کسی وجہ سے مجرم کو معاف بھی کر دیں تو حکومت کو حق حاصل ہے کہ ان جرائم کے سد باب کے لیے سخت سے سخت تعزیری سزائیں مقرر کرے۔

۳۔ حق اقتصاص سے دست بردار ہونا:

اگر کسی مقتول (مجنی علیہ) کے متعدد اولیاء دم ہوں اور بعض اولیاء قصاص کریں اور بقیہ اس قصاص پر راضی ہوں تو قصاص ہو جائے گا، لیکن اگر باقی ورثہ دیت کا مطالبہ کریں تو جس نے قصاص لیا ہے اس پر باقی ورثہ کے حصے کی دیت ادا کرنا واجب ہے، اور اگر باقی ورثہ خون معاف کر دیں تو معاف کرنے والوں کے حصے کی دیت قصاص لینے والا جانی (قاتل) کے ورثہ کو ادا کرے گا۔ ۳

۴۔ مصالحت اور معافی:

اگر مصالحت اور معافی جبراً اکراہ سے ہو تو ان کا مصالحت اور عفو کرنا صحیح نہیں ہے اور قصاص باقی رہے گا۔

بسمہ تعالیٰ
 السید ابن الحسن الرضوي آل باقر العلوم
 امام الجمعۃ فی جامع الخوجہ الشیعۃ الاثنی عشریۃ کھارادر کراتشی

۵۔ زوجہ کا قتل:

اگر کوئی شخص اپنی زوجہ کو قتل کرے اور اس زوجہ سے اسکی اولاد ہو جو تہاولی قصاص ہو اس اولاد کے لئے حق قصاص ثابت نہیں ہے اور قصاص ساقط ہو جائے گا؛ اسکی دلیل وہ روایات ہیں جن میں اس امر کی تصریح ہے کہ باپ کو بیٹے کے عوض قتل نہیں کیا جاسکتا، لیکن دیت واجب ہوگی؛ اور اگر مقتولہ کے کوئی دوسرے اولیاء دم ہوں تو انہیں حق قصاص حاصل ہے۔

۲۔ دیت کی ادائیگی:

ہر وہ شخص جو مال میں وارث ہے دیت کا بھی وارث ہے سوائے مادری بھائی بہنوں کے۔

۷۔ بدل صلح:

الف) نکاح جو بغیر رصایت جبر و اکراہ سے ہو باطل ہے،

ب) حکومت اس معاملے کے معاشرتی مفاسد کے پیش نظر تعزیری سزائیں (جس، کوڑے، مالی جرمانے وغیرہ) وضع کر سکتی ہے جو قاضی اپنی صوابدید پر دے گا۔

۸۔ غیر مسلموں پر قوانین قصاص کا اطلاق:

کافر ذمی اگر دوسرے کافر ذمی یا غیر ذمی محقون الدم (جس کا خون بہانا جائز نہ ہو) کو عمدہ قتل کرے تو اس کے بدلے قتل ہوگا اسی طرح ذمیہ کے بدلے

۹۔ شہود کا معیار:

اگر شہود کا معیار میسر نہ ہو تو حسن ظاہر کو معتبر سمجھا جائے گا۔

۱۰۔ غیرت کے نام پر قتل وغیرہ کا سد باب:

رک ۷ (ب)

بسمہ تعالیٰ
 السید ابن الحسن الرضوی آل باقر العلوم
 امام الجمعۃ فی جامع الخوجہ الشیعۃ الاثنی عشریہ کھارادر کراتشی

- 1۔ ولی دم ہر وہ شخص جو مردوں میں سے میراث پاتا ہو سوائے شوہر کے اور وہ شخص جو ماں کی طرف سے رشتہ دار ہو اور عورتوں کو نہ حق عفو نہ ہی حق قصاص حاصل ہے
 (مبانی تکملۃ المنہاج آیت اللہ خوئی ص ۱۲۸ ج ۲)
- 2۔ قتل عمد میں اگر دیت پر مصالحت ہو جائے یا قاتل معاف کر دیا جائے تو اس پر کفارہ قتل پھر بھی واجب رہے گا جو کہ کفارہ جمع ہے
- 3۔ ۱۔ غلام آزاد کرے ۲۔ دو مہینے کے مسلسل روزے رکھے ۳۔ ساٹھ مسکینوں کو کھانا کھلائے۔
- 4۔ (مبانی تکملۃ المنہاج آیت اللہ خوئی ج ۲ ص ۱۳۱)
- 5۔ (امبانی تکملۃ المنہاج آیت اللہ خوئی ج ۲ ص ۷۴)
- 6۔ (تحریر الوسیلۃ آیت اللہ شہینی ج ۲ ص ۳۸۶)
- 7۔ (مبانی تکملۃ المنہاج آیت اللہ خوئی ج ۲ ص ۶۴)

نوٹ: اس سلسلے میں وسائل الشیعۃ
 ج ۱۱۹ ابواب وقصاص نفسی
 ایک اہم سلسلہ ہے

سید ابن حسن الرضوی
 ۴ دسمبر ۲۰۰۳ء

Meeting with Justice ® M.A. Rasheed, Vice Chancellor and Mr. Asad Khan Luni, Vice Chancellor , Baluchistan University (10th February 2004)

The question/answer session with him was as follows:

Q.i. Whether the offences under Qisas & Diyat, as spelled out in Shar'iah are directed against the legal order of the State or against the person of victim?

Ans. The offences under Qisas & Diyat law, are directed both against the legal order of the State as well as the person of victim, the reason being, that the State is responsible for the protection of the lives and property of its people and the legal heirs of victim are aggrieved party.

Q.ii. Whether the compounding of murder committed in the name of 'honour' (ghairat) is Islamic?

Ans. *The killing in the name of 'Honour' has no justification hence this offence should be non-compoundable.*

Q.iii. Whether the waiver of the right to Qisas or compounding of offence **at any stage by any one of the legal heirs** is Islamic, particularly, when the crime is alleged to have been committed in the **name of 'honour or 'ghairat'**;

Ans. *The legal heirs of the victim must be allowed to invoke their right to compound the offence only at the execution stage i.e. when the offence is proved and all the remedies are exhausted by the accused.*

Q.iv. Could the waiver of the right to Qisas or the compounding of offence by the women victims of violence be considered Islamic and be allowed by the Courts?

Ans. The rate of violence against women is rising in Pakistan and the victims hardly get compensation. Therefore, this offence should be made non-compoundable by way of State Policy.

Q.v. Whether a man guilty of committing a murder of his wife, leaving behind a child is exempted from Qisas, under Shar'iah?

Ans. There is a need to invoke Ijtihad in this context. I believe the parents of the murdered wife, leaving behind a child should be given the right to Qisas / compounding of offence.

Q.vi. Whether the mode for the disbursement of Diyat among heirs of the victims according to their respective shares in inheritance as provided u/s 330 of Pakistan Penal Code is Islamic and valid?

Ans. *Diyat is a compensation and not inheritance hence any good principle be followed for the distribution of the amount of Diyat.*

Q.vii. a) Whether Vani or Swara i.e. giving of female relative of accused in marriage as badl-e-sulh is invalid (as declared invalid u/s 310, PPC) **or void** in Islam?

Ans. *It is totally un-Islamic and be declared void ab initio.*

b) What punishment can be prescribed for Vani / Swara?

Ans. *Exemplary punishments must be awarded to the person concerned particularly the members of the concerned jirga and nikah khuan, who performed the nikha with the knowledge that the girl is given in marriage as badl-e-sulh.*

viii. Can the law of Qisas & Diyat be applicable to non-Muslims living in an Islamic country?

Ans. *Yes, as being a Public law.*

Q.ix. Is it possible to meet the criteria of Tazkiyat-ul-Shahood as required for Qatl-e-amd and hurt u/s 304, PPC read with Article 17 of Qanoon-e-Shahadat?

Ans. *Not possible.*

Q.x. What measure to be adopted to curb the social evil of 'Honour killings' & Swara / Vani in Pakistan?

Ans. *Sensitization and training of the judiciary and law enforcing agencies is much needed to address the social evils of the society.*

Further, while deciding the case, circumstantial evidences be given due weight even if the witnesses have turned hostile as it is a settled principle that “man may lie but circumstantial evidences cannot.”

List of Arabic / Urdu Terms Used in the Report.

1	Arsh	Means the compensation specified in this law to be paid by the offender to the victim or his heirs.
2	Badl-e-Sulh	Means compromise / compounding.
3	Daman	Means the compensation determined by the court to be paid by the offender to the victim for causing hurt not liable to Arsh
4	Diyat "Blood money"	Means the compensation specified in law payable to the heirs of the victim.
5	Fasad-fil-Ard	Mischief on Earth.
6	Ghairat	Honour
7	Gunah-e-Kabira	Major sins.
8	Had / Hudood	Punishment ordained in Quran & Sunnah
9	Hadith / Ahadeeth (p)	Saying of the Prophet (P.B.U.H)
10	Muhsan	A Muslim adult man or woman who is not insane and has had sexual intercourse with a Muslim adult woman or man who, at the relevant time were married to her/him.
11	Panchayat	Elders of a clan / tribe forming into a group to take major decisions pertaining to affairs / dispute of that particular tribe with others.
12	Qanoon-e-Shahadat	Law of evidence
13	Qatal	Means causing death of a person.
14	Qatal-e-Amd	Intentional Murder.
15	Qatal-e-Khata	Un-intentional Murder (by mistake)
16	Qisas	Means punishment by causing similar hurt at same part of the body of the convict as he has caused to the victim or causing by his death. If he has committed murder.
17	Shirk	To associate someone with GOD.
18	Sunnah	Practice of the Prophet. (P.B.U.H)
19	Tazir	Means punishment other than Hadd
20	Vani / Swara	A cultural practice wherein girls are given in marriage at the time of settlement of disputes between different tribes / clans.
21	Wali	Means a person entitled to claim Qisas (other than the person who murdered the victim)
22	Zina	Adultery
23	Zina-bil-jabar	Rape

List of Case Law

Abdul Haque v The State, PLD 1996 SC 1
Abdus Salam v. The State, 2000 SCMR 338
Ali Muhammad v. Ali Muhammad, PLD 1996 SC 274
Ashiq Hussain vs. Abdul Hamed, 2002 P.Cr. L.J. 859 [Lahore]
Federation of Pakistan through Secretary, Ministry of Law and another v. Gul Hasan Khan, PLD 1989 SC 633.
Faqir ullah vs. Khalil-uz-Zaman, 2000 PSC (Cr.) 252
Federation of Pakistan and another v. N.W.F.P. Government and others, PLD 1990 SC 1172
Ghulam Farid vs. The State, 1997 P.Cr.L.J. 1411 [Lahore]
Ghulam Hussain alias Hussain Bakhsh vs. The State and another, PLD 1994 SC 31
Ghulam Yasin and 2 others vs. The State, PLD 1994 Lah. 392
Humaira Mehmood v. State, PLD 1999 Lahore 494
Kamal v. The State, PLD 1977 SC 153
Khalil-uz-Zaman vs. Supreme Appellate Court, Lahore & 4 others, PLD 1994 SC 885
Muhammad Afzal v. The State and another, 1987 SCMR 1864
Muhammad Akram Khan vs. State, PLJ 2001 SC 29
Muhammad Rafique vs. The State, PLD 1993 Lahore 848
Muhammad Saleem vs. State, PLD 2002 SC 558
Nazir & another vs. The State 2000 P.Cr.L.J. 175
Riaz Ahmed v. The State, 1998 SCMR 1729.
Sardar Muhammad vs. The State, NLR 1999 Criminal 11
Sarfraz alias SAPPI & others v. The State, 2000 SCMR 1758
Shariat Appellate Bench in Pakistan and others v. Public at large and others. PLD 1987 SC 304
Shamoon alias v. The State, 1995 SCMR 1377
State v. Abdul Waheed and another, 1992 P.Cr.L.J. 1596
State v. Muhammad Hanif. 1992 SCMR 2047

Bibliography

Al-Jaziri, Abdul Rehman, Kitab-ul-Fiqh, Vol.5

Al Qur'an: Text, translation & Commentary by Abdullah Yousuf Ali, Lahore, Pakistan, Sh. Muhammad Ashraf.

Annual Report 2001-2002, Islamabad, Council of Islamic Ideology .

Awooda, Shaheed Abdul Qadir, Islam Ka Fojdari Qanoon, Lahore, Islamic Publication Ltd.

Constitution of Pakistan, 1973: compiled by M. Rafiq Butt, Lahore, Mansoor Book House, 2001

Duderiji, Adis, An Understanding of the Concept of Justice from the Qur'anic Perspective,
<<http://www.understanding-islam.com>>

Emmanuel, Zafar, Law and Practice of Islamic Hodood, Lahore, Pakistan, Khyber Law Publishers. 2002

Ghamidi, Javed Ahmed, 'Mezan', Lahore, Dar-ul-Ishraq

Hashmi, Syed Muhammad Mateen, Islami Hudood, Pindi Bhatian, Shoba-i-Tasneef-o-Taleef, Anjuman-e-Islah-e-Musalameen

Hedaya: Translation into English by Charles Hamilton, Lahore, Pakistan, Premier Book House

'Honour' Killings of Girls and Women, Amnesty International Report, Source: Internet

Islamic Qanun-e-Faujdari: An Urdu translation of "Kitabul Ikhtiar", by Maulana Salamat Ali Khan, Lahore, Law Publishing Company

Jame Tirmizi: Translation by Maulana Fazal Ahmed, Vol I, Karachi -Pakistan, Darul Ishaat.

Mufti-Islam Online Fatwa Committee (26-May-2001), <http://www.islamic-paths.org>

Niazi, Dr. Liaquat Ali Khan, Islamic Law of Tort, Lahore, Research Cell, Diyal Singh Library, 1988

Tafheem-ul-Qur'an: Translation of the Holy Qur'an by Abul Aala Moududi:, Lahore, Tarjuman-ul-Qur'an

Sahih Al Bukhari: Translation into English by Dr. Mahmood Matraji,
Corrected & Revised by F. Amira Zrein Matraji, Vol. IX, Karachi, Pakistan, Darul-Isha'at,.

Sunan Abu Dawud: Translation with explanatory notes by Prof. Ahmad Hasan, Vol.III, Lahore, Pakistan, S. Muhammad Ashraf.

Suanan Ibn e Majah Sharif: Translation by Imam Allama Nawab Waheed uz Zaman Khan, Vol II, Lahore-Pakistan, Mehtab Khan (regd)

Sahih Muslim: Translation into English by Abdul Hamid Siddiqui, Vol.II.B, Lahore-Pakistan,

Sh. Muhammad Ashraf,

State of Human Rights in 2003, Lahore, Human Rights Commission of Pakistan, 2003

Rehman, Dr. Tanzil-ur-Rehman, Crime and Punishment in Islam, PLD Journal, Lahore, PLD Publisher, 1980

Country-wide feed back on the draft report				
Mr. Ammar Khan Nasir Vice President, Al-Mawrid	We do not find anything in the recommendations, enumerated in the report, against the holy Qur'an and the Sunnah.			
Ms. Yakut Jamil-ur-Zahman Central Vice President Pakistan Muslim League	<p>I was extremely pleased to read the report prepared by the national Commission on the status of women on Qisas & Diyat Laws and the policy recommendations made there in.</p> <p>Recently, under the guidance of our party president, Chaudry Shujat Hussain, a meeting was held to discuss the issues of Hudood, Qisas and Diyat. You will be pleased to know that the issues raised and the recommendation made at the meeting were in line with those presented in your report. We have also sent our recommendations to the Nazriati Council and the Ministry of Law. Pakistan Muslim League and I would like to congratulate you and your colleagues on preparing a quality report supplemented by meaningful and thoughtful policy recommendations. We look forward to receiving similar reports in the</p>			

	future as well and assure you of our support in this endeavor.			
Prof. Sharif al Mujahid Karachi	I have already leafed through and glanced at its contents. I find them highly documented and cogent, and I would like to felicitate you warmly on putting so much of hard work into it and produce such a substantive and solid report. Needless to say, I fully subscribe to your objectives, and I am confident that the report would make a substantive contribution in accomplishing the desired results.			
Syed Naseer Shah Ex-member Advisory Panel IIC (Pak). Mianwali	<p>It is an honour for me to express my opinion on this draft report.</p> <p>Your hard work is commendable. I have found this draft report to be an extreme research work.</p> <p>I have found the Qisas and Diyat law to be amendable and repealable to great extent.</p> <p>I agree to each word that is written in this draft report about the Tazkia-al-Shahood.</p>	<ol style="list-style-type: none"> 1. For the implementation of Islamic law the society must be transformed first. 2. I wish that the validity of the law that has been made about the Diyat of woman should be challenged. 3. In my point of view the Majlis-e-Shura made by General Zia-ul-Haq should not be given the status of parliament or national assembly. The very existence of it was against the Constitution of 1973. Similarly the assembly that came into being as a result of Non-Party Election was completely fake and had no right of lawmaking. That's why an appeal 		As suggested by you the report after finalization and passed by the NCSW will be widely disseminated among all the people.

		<p>should be made in the Supreme Court (according to legal point of view). If law of Qisas and Diyat is accepted as it is, then the position of woman can never become better. Such laws in which woman is considered as a half human being is against not only the rule of justice in Islam but is also a way of making fun of Islam on international level.</p> <p>4. The discriminating provision, made by the jurists (Faqh'i), should also be challenged. Detailed discussion on 'women's evidence' is in my book. Copy of relevant pages is attached.</p> <p>5. This report must be disseminated among women and men.</p>		
Maulana Abdulhaq Hashmi Naib Ameer Jamat-e-Islami, General Secretary MMA Balochistan.Quetta	You have put hard work and effort in this report.		1. Arabic sentences, words, Aayah and Ahadid have errors. 2. Similarly urdu sentences also have typographical errors	Printing errors have been identified and will be taken care at final stage.
Maulana Abdur Rasheed Al Azhari Member Roit-e-Hilal Committee Member National	This initiative of NCSW is highly commendable. My full cooperation is ensured to the Commission in this context.			

Syllabus Committee M/o Education Member Steering, Isb. Committee for Reforms of Religious Institutions, Balu: Master Trainer for Hujaj from Balu: M/o Religious Affairs, Isb.				
Prof. Dr.Iftikhar N.Hassan Director, WRRC Fatima Jinnah Women University, Rawalpindi	This indeed is a valuable addition to our library resources & will certainly prove useful for our faculty and students.			
Ms. Feyza A. Bhatti Senior Research Fellow Mahbub ul Haq Human Development Centre.	I would like to congratulate your research team for putting together such a comprehensive, informative and well-written report.	An inclusion of dictionary for the words used in the report (words in Arabic or Urdu, such as Ghariat, Ahdeeth, Qatle etc.). Though the words are defined at various places in the report, a dictionary would ease the reading of the report for the non- Muslims. 2. Similarly, the legislation included in the text should be defined as footnote or should be referred to the page it is explained. For example, section 2.4 includes almost all of the legislation mentioned in the previous text but		Meanings & explanation, wherever necessary are given. Demand for whole directory is difficult to consider. However a list of terms Arabic / Urdu are being added with the Report. Whole legislation cannot be defined in footnote.

		<p>someone reading the part on the scope of research (pages 3-4) might get confused. The clarification of the legislation will also make the comprehension of the report easier for those who are not lawyers.</p> <p>3. In addition to general recommendations on pages 48-9, I would advise inclusion of awareness rising in the general public, particularly women, through training, street plays etc.</p> <p>4. Active dissemination of the information included in the report to make more aware of the ‘common mistakes’ that are made under the name of Islam</p>		<p>However the text of relevant sections are already given.</p> <p>Recom 3: Will be communicated to Advocacy Unit for consideration..</p> <p>Recom: 4 has already been followed.</p>
Mr. Israr Ayub Scholar & Director, National Accountability Bureau Mazafarabad, AJK		Any amount of appreciation for this draft report, prepared by NCSW, is not sufficient		

<p>Ms. Erum Sajjad Gul Advocate High Court Lahore</p>	<p>Very impressive and the hard work put in the research was evident from the manual and the prepared draft.</p>	<ol style="list-style-type: none"> 1. The word wali would be substituted with some other word as the word Wali has an entire different connotation in the Quran. 2. In the punishment for giving a woman in marriage by way of badl-e-sulha a fine should also be payable by the offender to the woman amounting to rupees hundred thousand (Rs.100,000). There should also be a punishment for intending to give a woman in marriage by way of badl-sulah, the offender be given two years imprisonments and a fine amounting to rupees fifty thousand (rupees fifty thousand) payable to the woman. 3. The father would not be able to move the Guardian Court for the custody of the child born out of wedlock of badl-e-sulha but will be allowed only in exceptional cases. Also the father would be bound to pay the maintenance of the child and incase the father refuses he should be fined and imprisoned. This clause be added so the woman is not black mailed and forced to stay in such marriage because of the child. 4. For the strengthening of the overall 	<p>On page 48 of the manual sent by you it is written that 323 PPC defines Diyat but this Section gives the value of diyat and is defined in Section 299(e) PPC.</p> <p>On page 48 Instead of typing 337-Z PPC, 338-Z has incorrectly been typed.</p>	<ul style="list-style-type: none"> • Errors noted and corrections will be made accordingly. • The term wali has been discussed in detail. • Recom. 2 can be considered subject to approval of the Chair & Board. • Punishment for violation of section 310 PPC has already been provided u/s 310-A (Amended in 2005). • Recom. 3 since these marriages are legal i.e. performed according to the procedure laid down, all laws are applicable.
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		judicial system a panel of experts in shariah law be attached with the courts all the time so the judges could at any time ask the opinion of these experts.		
Mr. Ashraf Khan Provincial Project Manager UNDP	I appreciate the policy research on justice in Islam, conducted by the NCSW			
Mr. Mohammad Zia-ur-Rehman Chief Executive Awaz Foundation	These reports will surely be beneficial in our endeavours.			
Dr. Ume Kalsoom MBBS, DMCH. Lahore	<ol style="list-style-type: none"> 1. I was pleased to see in the foreword that Commission has decided to investigate the ruthless rituals and cultures such as honour killing etc. I was hopeful that in this draft the causes behind these rituals will be examined unbiased 2. Based on the result of the research, this draft contains some commendable points. 3. It is right that the violence against women specially Honour Killing and rituals like Sawara/Vani have no link with Islam. Moreover right point is that Islam does not only bear the violence against women but also the unjust violence against any living being. 4. Based on the results of the research we thoroughly agree with 	<ol style="list-style-type: none"> 1. In article no. 5 it is said that Islamic teachings do not provide any relief from the sentence of Qisas, there is a need of more research on this issue. 2. Before making any decision it should be kept in mind that every decision can become an example for any other decision. 3. (Refer to article 8) in the country's constitution non-Muslims are given the right to handle their issues according to their personal laws (Nikah, marriage, division of lineage etc.). the issue of Diyat can also be treated in the same way. 	<ol style="list-style-type: none"> 1. I am regretful to say that in the very beginning this report is based on bias. One assumption has been made that Law of Qisas and Diyat is a cause of strengthening social evils that is an extremely wrong one. 2. This assumption has been made because the main interest of the Commission is not to liberate the society from wrong rituals but only to eliminate the Law of Qisas and Diyat or to change its originality completely. 	The critic's arguments are not based on any concrete evidence. Hence a report which is prepared on the basis of the provision of Qur'an and Sunnah cannot be revised unless substantial evidence from the primary source of laws are provided by the critic. 1. The Provisions encouraging the social evils have been pointed out

	<p>whatever has been said according to 1,2 and 3.</p> <p>5. This is true that in the marriage arranged as a result of “Badl-e-Suleh”, the will of woman is necessary.</p> <p>6. (Refer to article 10) “The murders in the name of honour can be halted through united course of actions”__ e.g. strict imposition of laws and impressive way of inspection. To this extent we agree with this suggestion but will this course of action be taken only for “Honour Killing” or also for the elimination of other types of crimes? Also, what will be the factors of united course of actions?</p>		<p>3. This whole draft is not up to the standard of educational, (see page 4)</p> <p>4. According to 4 the words used e.g. “Padrasry Samajy Dhanche” refers to a specific school of thought. In any research report the use of such susceptible and disputable words is against the liberal research and the results deducted from it.</p> <p>5. (Refer to article 5) If the division of this money is left to the judge or court then in future it can become an example for every case.</p> <p>6. It has not suggested any applicable solution to the problems.</p> <p>7. It does not contain any suggestion for the improvement of</p>	<p>and discussed in the report.</p> <p>4. As referred by you “Padrasry Samajy Dhanche” are not referred in the Report.</p> <p>5 & 6. The disbursement of Diyat is to be maid by the Judge on case to case basis as per needs of legal heirs.</p> <p>7. Please refer to IV General.</p> <p>8. The state is for the protection of all-men and women alike.</p>
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			<p>situation.</p> <p>8. Article no. 4 is extremely vague and unclear. Who will be responsible for the provision of justice to the female victim on the behalf of State? Will the state be responsible only for the provision of justice to the woman; the male victims will be out of the circle of justice of the state? If the responsibility on behalf of state to provide justice to the female victim is of police then by looking at the present condition of the police it can be said that this article will not be more than just an addition to the worse.</p> <p>9. According to article 4 it is said that for women the gain of their rights is not easy, is it easy for male victims to attain their rights? To make</p>	<p>Any motive behind a murder is a murder. Depends of the facts of each case.</p> <p>The law will be applicable to all; as all citizens are equal before law (article 25 of the</p>
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			<p>easy the gain of rights commission has not provided any practical suggestion.</p> <p>10. In article 5 such questions are not answered:</p> <ul style="list-style-type: none"> ➤To which extent does Islamic law beholds the motives behind crime? ➤Is the right to ‘self-defense’ not accepted? ➤What do the laws of other countries like USA, UK etc and Muslim countries like Saudi Arabia and Iran etc. say in this aspect? <p>11. It is not clear that the release from the sentence of Qisas will be only in the case of the ones involved in the crime against women or will it extend to all the issues of Qisas.</p> <p>12. In article no. 6 it is said</p>	<p>constitution 1973). This issue has been dealt with in detail in the report and recommendation is for disbursement according to the needs of the legal heirs. There is no personalized recommendation.</p> <p>Reasoning is given in the report. This scholars opinion support this point of view.</p>
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			<p>“The division of Diyat, Arsh, Damaan cannot be done according to the law of lineage” __ on the basis of which facts and leading instructions does the commission has deducted this result? __ No reasoning has been given in the agreement of this result. It seems that this assumption has been given due to the personal liking of some people.</p> <p>13. For “Tazkiya tus Shahood” it is said that “It is not in accordance with the Islamic teachings” __ in details no reasoning has been given for this claim.</p>	
Dr. Mahmood Ahmad Ghazi International Islamic University	<p>It’s a beautiful publication on the concept of justice in Islam.</p> <p>Unfortunately, due to my heavy pre-occupations, I could not find time to go through the report.</p>			

<p>Ms. Samia Rahil Qazi MNA, MMA Reply report on her behalf by S. Maroof Shah Sherazi Advocate Chairman Zalal-ur-Qur'an Foundation, R/pindi</p>	<p>NCSW has given weird recommendations PR.1. I failed to understand as to how 'fisad-fil-ard' has been added in sec.299</p> <p>How zina bil jabr be added within this chapter? and how should it be included within the ambit of fisad-fil-ard?</p> <p>Fisad-fil-ard has been included in Hudood in the chapter of Haraba and it includes those crimes which are against an established State. Such crimes are included in sec.121-130</p> <p>Under Art. 17 of Qanoon-e-Shahdat, the requirement for the proof of zina bil jabr will be the same as for zina</p> <p>In this regard, the Commission may suggest amendment in Hadood that the report of zina bil jabr or honour killing should be adequate proof of the offence and no evidence be required in this regard.</p> <p>PR.2. The Commission has very cleverly sought amendment / repeal of verse 178 of Surah al Baqrah</p>	<p>It is requested to the Members of the National Assembly that this report be rejected. If they want amendment they must draft a comprehensive Islamic law like in Jordan and Sudan</p> <p>Law of Qisas and Diyat and other penal laws should be together.</p>	<p>The offence of rape (zina bil Jabr) has been mentioned with reference to the kinds of heinous crimes and not as a subject of this research study.</p> <p>The offence of Zina-bil-Jabar is also a crime against society apart from being against the victim.</p> <p>Further, the critic's arguments are not based on any concrete evidence. Hence a report which is prepared on the basis of the provision of Qur'an and Sunnah cannot be revised unless substantial evidences on the contrary are provided.</p>
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	<p>PR.3. It is the exclusive right of Auli-e-dam to take Qisas or Diyat. According to Shariah diyat can be taken only if all legal heirs agree.</p> <p>PR.4. Court have been given discretionary powers in accordance with the circumstances of the case.</p> <p>PR.5. The Commission must conduct an in-depth study of the circumstances and requirements of families that have rivalries and then suggest amendment in Shar'iah</p> <p>It is not pertinent for a Commission to propose amendment/repeal in Shar'iah</p> <p>PR.6(i). Any marriage that has taken place with the consent of parties and their families cannot be stopped by any law. And any such law, if framed will be ultra vires</p> <p>Ref. 6(ii). If a woman is given in marriage by way of badl-e-sulh she may herself take action against, also network of NGOs can help informing the concerned officials about such cases. In this context following authorities be given powers:</p>		<p>PR2. The members of the commission cannot even think of suggesting any such change as mentioned in PR2</p> <p>PR3. Policy Recommendation are based on discussions and opinions of the scholars, some of which are part of this report.</p> <p>PR5. The commission has not recommended amendment in Shariah it is interpretation of Shariah in drafting of laws which is being discussed. One of the functions of the NCSW is to recommend repeal, amendment or</p>
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	<p>a. Chairman, Union Council (Conciliatory powers) b. District Family Court (Intervention powers) c. District Mohtasib (Investigation powers) Police must not be involved in family matters</p> <p>PR.6(iii) it is not appropriate to apprehend parents and members of jirga involved in giving a woman in badl-e-sulh</p> <p>PR.7.Art. 17 of Quanoon-e-Shahadat is very clear on the evidence of man and woman</p> <p>PR.8. comments are not relevant</p> <p>Recommendation on repeal of provisions 304(1)(b). This is based on the verse of holy Qur'an (nus-e-sariha)</p> <p>306® This provision is based on hadith and in Islam progeny is the property of father.</p> <p>313(2) This will make an offence which holy Qur'an has made</p>			<p>propose new law.</p> <p>PR6ii. The consent of a girl is mandatory for any marriage under Shariah as well as under the law. The law has already given powers to different authorities in respect of family affairs.</p> <p>PR6iii. Any one who violates law should be dealt-with accordingly-as all citizens, even the parents and family members, are equal before law as enshrined in Article 25 of the constitution 1973.</p> <p>PR7. It is a question of interpretation. Recommendations are given wherever</p>
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	<p>compoundable, a non-compoundable one.</p> <p>Amendment in certain provisions:</p> <p>Sec. 99. Right of defence is available to victim and through this amendment that right will be taken away</p> <p>Sec. 299M /305. No one can take Qisas except legal heirs and that's the objective of this law, then why amendment?</p> <p><u>Zina bil jabr might come under fisd-fil-ard through Ijtihad</u> but its recommendations can be given under Hadood Law</p> <p>Sec.10. This recommendation is contrary to Constitution of Pakistan</p> <p>Sec.330. If Diyat is a right of legal heirs then the law of inheritance will apply. Decision by Court will lead to further litigation. This is not acceptable from legal point of view</p> <p>Sec. 337Z & 338Z. These amendments are contrary to Qur'an and Sunnah.</p>			<p>the specific law is discussed.</p> <p>PR8 Section 330. Rights and procedure are two different things. The state can make laws and rules as to procedure where there are no specific Quranic Directions.</p> <p>Section 330 Diyat</p>
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	<p>Sec. 338E(1). Interference of State, Court and Police in family matters will be disadvantageous.</p>			<p>is compensation and not subject to inheritance. Examples and clarifications has already been given in text of the report.</p> <p>PR8 Section 338. E(1). State is responsible to ensure protection and implementation of law and fundamental rights which can be carried out only through Police/Law enforcement Agencies and Courts.</p>
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Mr. Haroon Nasir Research Associate Christian Study Centre Rawalpindi	I found it very impressive			
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